

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

To be argued by
RICHARD M. SHARFMAN

74-1915

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 74-1915

HARRY S. SAMUELS,

Plaintiff-Appellant,

-against-

ARMSTRONG CORK COMPANY,

Defendant-Appellee.

Appeal from Part of a Judgment of the United States District
Court for the Southern District of New York

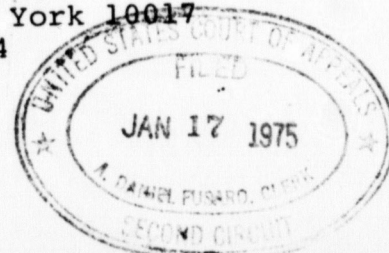
SUPPLEMENTAL APPENDIX

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UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals,
in and for the Second Circuit, held at the United States Court
House, in the City of New York, on the seventeenth day of
December, one thousand nine hundred and seventy-four.

Harry S. Samuels,

Plaintiff-Appellant,

v.

Armstrong Cork Company,

Defendant-Appellee.

It is hereby ordered that the motion made herein by counsel
for the appellant by notice of motion dated December 4, 1974
for a stay pending determination of the appeal be and it hereby
is denied.

It is further ordered that either party or both shall file
as a supplemental appendix, a separate volume, properly labeled,
which includes the depositions in question.

A. DANIEL FUSARO
Clerk
by Edward J. Guardaro
Senior Deputy Clerk

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BEFORE:

HON. HENRY J. FRIENDLY

HON. WILLIAM H. TIMBERS

HON. MURRAY I. GURFEIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY S. SAMUELS,
Plaintiff
- against -
ARMSTRONG CORK COMPANY,
Defendant

:
:
:
: 69 CIVIL ACTION 3022
:
:
:

D E P O S I T I O N

Deposition of witness produced, sworn and examined before the undersigned Notary Public on Tuesday, November 23, 1971, beginning at 9:00 o'clock a.m., in Conference Room 211, Building Products Division, Armstrong Cork Company, Liberty and Charlotte Streets, Lancaster, Pennsylvania, under and by virtue of Notice to take Depositions pursuant to Rule 26 et seq. of Federal Rules of Civil Procedure, on behalf of Harry S. Samuels, Plaintiff, in a certain case pending in the United States District Court, Southern District of New York, to the above caption and number.

APPEARANCES:

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330 Madison Avenue, New York, N. Y. 10017
By
WILLIAM SCHURTMAN, ESQ.
For: Plaintiff

R. S. TRIGG, ESQ.
Legal Department, Armstrong Cork Company,
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For: Defendant

CHADBOURNE, PARKE, WHITESIDE & WOLFF
25 Broadway, New York, N. Y. 10004
By
PAUL PENNOYER, JR., ESQ.
BRUCE KEIHLER, ESQ.
For: Defendant

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PLAINTIFF-BANZHAF:

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STIPULATION

It is stipulated that filing of the deposition is waived and the witness may sign deposition before any Notary Public.

- - -

MAX BANZHAF, a deponent of lawful age, having been duly sworn, doth depose and say as follows:

BY MR. SCHURTMAN:

Q Mr. Banzhaf, would you state your full name and address for the record?

A Max Banzhaf, 310 Eshleman Road, Lancaster, Pennsylvania.

Q What is your present position with defendant Armstrong?

A I am Vice President and Treasurer.

Q How long have you held these positions?

A I lost track of time. I think it was since January, 1968.

Q What positions did you hold prior to that time?

A Before that I was Staff Vice President of the company. Before that, Director of Advertising. Before that, a Manager of Building Materials Advertising. Prior to that, a salesman in the Chicago and Milwaukee offices.

Q Now I take it in 1966 and 1967 you were Staff

1 Vice President?

2 A Right.

3 Q Did you also hold the title of Director of Staff
4 Services?

5 A No, I did not.

6 Q What duties did you have as Staff Vice President?

7 A The Advertising and Promotion Department reported
8 to me as well as the Employee Relations Department and the
9 Public Relations Department.

10 Q Did you have any duties pertaining to possible
11 acquisitions, mergers, or the like?

12 A Specifically assigned?

13 Q Was that part of your duties as Staff Vice
14 President?

15 A As a specific assignment?

16 Q Yes.

17 A No, not as a specific assignment.

18 Q Did you, however, become involved in acquisitions
19 and mergers?

20 A Yes, subsequently.

21 Q In what capacity?

22 A As a head of a task force, if you will, to
23 investigate the furniture industry.

24 Q What was that task force?

25 A What did it consist of?

1 Q Well, when was it set up? What was its objective?

2 MR. PENNOYER: Let's take it one by one. When
3 was it set up?

4 THE DEPONENT: When was it set up? Oh, I think
5 it was formally constituted -- in the late summer of 1965 is
6 when we formally constituted it as a growing out of an informal
7 investigation of the furniture industry which I had been con-
8 ducting for, oh, I think maybe the better part of a year prior
9 to that.

10 But we formally had the assignment, I think it
11 was perhaps in August, September, something like that, of 1965.

12 BY MR. SCHURTMAN:

13 Q Who were the members of the task force?

14 A I think I was the principal member of it and my
15 assignment was to draw for membership anyone I really needed
16 to work on the problem. I don't even recall anyone else being
17 specifically assigned. They may have been. I don't remember.

18 Q What was the stated objective of the task force?

19 A It was to investigate whether or not we should
20 enter the furniture industry, to determine what role we might
21 play in that industry, and to determine the method by which
22 we were to enter the industry.

23 Q What investigations did you conduct as the head
24 and possibly sole member of the task force?

25 A Well, there were many members off and on. What

1 did I investigate? Perhaps the best way I can answer that
2 question is to tell you how I go about or have gone about all
3 of these activities, and this isn't the only one I have con-
4 ducted in the past.

5 First, to learn everything I can about the
6 industry, who is in it, how they perform, how they operate,
7 who is successful, why they are successful, and then from this
8 -- and knowing our own specific areas of knowledge and exper-
9 tise and many discussions with our own people and investiga-
10 tions -- find out where we could make a contribution, and from
11 this you sort of steer yourself in the way your logic and
12 investigation tends you to go.

13 Q Did you contact any furniture companies in 1965?

14 A Yes.

15 Q With a view to possibly acquiring them?

16 A Possibly.

17 Q Or merging with them?

18 A Yes.

19 Q Which companies did you contact in 1965?

20 A In 1965 I talked to, to my knowledge, Drexel,
21 Thomasville, Western Stickley, I think at that time United,
22 Dixie. Several. I can't name them all.

23 Q Did you talk to Kroehler?

24 A Not in 1965.

25 Q Did you talk to Johnson-Carper?

1 A Not in '65.

2 Q Now when you say you talked to Thomasville,
3 could you elaborate on that? To whom did you talk?

4 A I talked specifically to James Lynch in 1965.

5 Q Who is James Lynch?

6 A James Lynch at that time was head of manufactur-
7 ing.

8 Q Where did you talk to him?

9 A At Thomasville.

10 Q You went to Thomasville?

11 A Yes.

12 Q Do you remember when that was?

13 A It was in the very latter part of 1965. It
14 could have been in November.

15 Q Did you meet with anyone other than Mr. Lynch?

16 A I don't recall. Mr. Finch wasn't in town, by
17 the way.

18 Q How long did you meet with Mr. Lynch?

19 A A couple of hours.

20 Q What did you discuss?

21 A Generally the furniture business. At this time
22 we were gathering information. All of our plans weren't
23 completely formalized at that time, so this was investigatory,
24 you might say.

25 Q Specifically, did you discuss with Mr. Lynch the

1 the possibility of Armstrong acquiring Thomasville?

2 A No.

3 Q Did you discuss with him the possibility of
4 Thomasville being merged with Armstrong?

5 A No.

6 Q Would it be fair to say -- just to use a phrase--
7 that you were essentially picking his brains with respect to
8 the furniture industry?

9 A That might be accurate.

10 Q Do you have anything in writing pertaining to
11 your visit with Mr. Lynch, any correspondence, memos, notes,
12 anything of that sort?

13 A There is, I am sure, in the files proof that we
14 were there. Now as to correspondence to him, there may well
15 be a letter thanking him for the time he spent. That I just
16 don't recall. But there is definite proof we were there.

17 MR. SCHURTMAN: If there is any such corres-
18 pondence, Mr. Pennoyer, may I ask that it be produced?

19 MR. TRIGG: May I go off the record?

20 - - -

21 (Discussion off the record)

22 - - -

23 THE DEPONENT: Yes, I can tell you where there
24 is correspondence.

25 MR. PENNOYER: Just a minute, we are looking.

1 BY MR. PENNOYER:

2 Q Mr. Banzhaf, I show you a memorandum. Is that
3 what you have in mind?

4 A Yes. That is certainly one of them.

5 Q And another memorandum?

6 A That is right.

7 MR. PENNOYER: All right, I hand you two
8 memoranda, one dated November 22, 1965 and one November 19,
9 1965.

10 MR. SCHURTMAN: Why don't we mark the November
11 19, 1965 memo.

12 BY MR. SCHURTMAN:

13 Q I take it that is from A. C. Littlejohn?

14 A That is right.

15 Q To R. R. Zarr?

16 A Yes.

17 MR. SCHURTMAN: It is a two page memorandum with
18 some figures attached and I will mark it Plaintiff's Exhibit
19 No. 5 for identification. Was that the last number yesterday?

20 MR. KEIHNER: I think it was.

21 (Plaintiff-Banzhaf Exhibit No. 5,
22 Memorandum dated November 19, 1965,
23 to R. R. Zarr from A. C. Littlejohn,
consisting of two pages, was pro-
duced and marked for identification.)

24 MR. SCHURTMAN: Let me mark the memo dated
25 November 22, 1965 from Mr. Donley to Mr. Banzhaf as Plaintiff's

1 Exhibit No. 6 for identification.

2 (Plaintiff-Banzhaf Exhibit No. 6,
3 Memorandum dated November 22, 1965
4 to Mr. Banzhaf from Mr. Donley, was
produced and marked for identifica-
tion.)

5 BY MR. SCHURTMAN:

6 Q Are these the only two writings pertaining to
7 the meeting in November, 1965?

8 A I wouldn't swear to that. I don't know. There
9 may be more.

10 MR. SCHURTMAN: Mr. Pennoyer, do the Armstrong
11 files contain any others?

12 MR. PENNOYER: Those are the only ones we have
13 seen.

14 BY MR. SCHURTMAN:

15 Q Was one of the purposes of your visit to find
16 out that Armstrong could supply certain materials to the
17 furniture industry?

18 A That was a possibility, or one of.

19 Q What were the other objectives?

20 A Well, at that time we were trying to take as
21 broad a look at the industry as we possibly could, with the
22 objective, of course, to enter it. We were considering not
23 only being a manufacturer of furniture but also perhaps being
24 a supplier to furniture or both, assuming there was nothing
25 inconsistent with that idea, and so our viewpoint was rather

1 wide ranging.

2 Q When you say a supplier of furniture --

3 A A supplier to the furniture industry.

4 Q A supplier to the furniture industry?

5 A We were already supplying a few things.

6 Q What was the next time you had any contact with
7 Thomasville?

8 A Early in 1966, January, I think, just a few
9 months later.

10 Q What happened then?

11 A At that time we went to Thomasville with an
12 appointment arranged by, as I recall, Mr. Covington of the
13 High Point Chamber of Commerce, where I had an opportunity to
14 meet with Mr. Finch and to talk with him at some great length,
15 including visiting his show rooms, and I believe we went
16 through part of the factory at that time.

17 Q Who was we?

18 A We consisted of Milt Ford, who is our Vice
19 President in charge of Manufacturing Services and James
20 Hazeltine, who was at that time Assistant Director of Research.

21 Q Did you meet with Mr. Finch?

22 A I sure did.

23 Q How long?

24 A Several hours, as I recall.

25 Q What did you discuss with Mr. Finch?

1 A A variety of things concerning the industry, its
2 trends, the way in which it was going, and the possible
3 opportunities for us in the industry.

4 Q Did you have any discussion with Mr. Finch con-
5 cerning the possibility of Armstrong acquiring Thomasville or
6 Thomasville being merged into Armstrong?

7 A In a certain sense, yes, in that Mr. Covington
8 had told me, in setting up this appointment -- or really as
9 a condition of setting up the appointment -- that there were
10 many people that came to the High Point area, as I believe his
11 words were, flying under false banners, and that he did not
12 want me, at any rate, to be guilty of that same sin. I
13 assured him that I would not.

14 So very initially, when I first met Mr. Finch,
15 I told him that I did not want to be coming to him under false
16 pretenses, that I wanted him to know that we were very inter-
17 ested in the furniture industry, that the range of our interest
18 at the moment was very wide, that we might be talking to him
19 even as a competitor some day or as a supplier to him or as a
20 partner, and I didn't want him to feel that if there was some-
21 thing he didn't want to discuss with me under those circum-
22 stances, you know, I wanted him to be sure he knew the banner
23 that I was flying under at that time.

24 'So there should have been no question in his
25 mind that the possibility of acquisition or discussing

1 acquisition was something that we definitely would have in
2 mind sometime.

3 Q Apparently there was a question in his mind be-
4 cause he did not so testify, but --

5 MR. PENNOYER: Objection. I move to strike it.
6 BY MR. SCHURTMAN:

7 Q Was that the only discussion you had which in
8 your interpretation had to do with the possibility of acqui-
9 sition or merger?

10 A With him?

11 Q Yes.

12 A The only one at that time?

13 Q At that time, in January, 1966.

14 A Overtly, yes.

15 Q What does overtly mean?

16 A Well, let's put it this way. When you meet a
17 girl and you shake hands, you may have something in mind but
18 you don't state your proposition right off the bat, unless
19 you want your face slapped.

20 Q In other words, your testimony is that you may
21 have had it in mind but you did not communicate it?

22 A Exactly.

23 Q To Mr. Finch?

24 A That is right, other than what I said to him.

25 Q Did you communicate it to anyone else in writing,

1 what you had in mind?

2 A At that time?

3 Q Yes.

4 A I don't think so, but I don't recall.

5 Q Did you dictate any final memorandum or any
6 memorandum to other Armstrong executives saying that I have in
7 mind the possibility of an acquisition or merger with Thomas-
8 ville but I am not going to tell Mr. Finch pointblank that
9 this is what I have in mind?

10 A At that time?

11 Q Yes.

12 A I don't recall.

13 MR. SCHURTMAN: If there is any such document
14 in the file, Mr. Pennoyer, I would ask that you product it.

15 MR. PENNOYER: We have produced the documents
16 you have called for and I don't intend to sift through our
17 files again -- you have copies of what we have produced --
18 in each case to meet a particular question of yours.

19 MR. SCHURTMAN: I disagree with you, sir. My
20 production request was under one rule. I am now examining
21 the witness under a different rule. If the witness says that
22 there are documents or there is the possibility of documents,
23 I am entitled to see them.

24 MR. PENNOYER: I am not going to -- I repeat --
25 search through the documents we have produced for you, and of

1 which you have copies, in each case to satisfy a particular
2 question you have at the time.

3 MR. SCHURTMAN: I am not asking you to look at
4 the documents you have produced for me. I am asking you if
5 there are any other documents. I am familiar with the docu-
6 ments you have produced for me.

7 MR. PENNOYER: The answer is, other than what
8 we have produced already concerning the High Point Chamber of
9 Commerce meeting, we have nothing else.

10 MR. SCHURTMAN: Thank you.

11 BY MR. SCHURTMAN:

12 Q Am I correct in understanding, Mr. Banzhaf, that
13 the primary objective of your January, 1966 visit to Thomas-
14 ville was to discuss the possibility of Armstrong supplying
15 certain items to Thomasville?

16 MR. PENNOYER: Objection.

17 THE DEPONENT: No, that was not the primary
18 purpose.

19 BY MR. SCHURTMAN:

20 Q All right, what was the primary purpose?

21 A The primary purpose was to explore that possi-
22 bility as well as the possibility of our entering the furni-
23 ture business as a manufacturer in some capacity or another,
24 as well as to find -- or confirm is a more accurate descrip-
25 tion -- the gaps and deficiencies we saw in the industry to

1 which we thought we could make a contribution -- manufacturing,
2 marketing, for example, the role of plastics in furniture
3 manufacturing that we felt we had some knowledge about was one
4 example.

5 Q Were these plastics that you would furnish to
6 Thomasville?

7 A Not necessarily. We might as our own manu-
8 facturer, as a means of making furniture. Not necessarily
9 parts, but whole pieces of furniture of plastic.

10 Q Were there any other objectives?

11 A To enter the business, probably as an acquisi-
12 tion.

13 MR. SCHURTMAN: Would you mark this Plaintiff's
14 Exhibit 7? Off the record.

15 - - -

16 (Discussion off the record)

17 - - -

18 MR. PENNOYER: I hand you the original letter,
19 Banzhaf to Allen, dated February 10, and a pink copy of the
20 letter of February 2, Banzhaf to Allen.

21 MR. SCHURTMAN: Would you mark the February 2,
22 1966 letter as Plaintiff's Exhibit 7 for identification?

23 (Plaintiff-Banzhaf Exhibit No. 7,
24 Letter dated February 2, 1966,
25 was produced and marked for iden-
tification.)

1 MR. SCHURTMAN: And the February 10, 1966 letter
2 as Plaintiff's Exhibit No. 8 for identification.

3 (Plaintiff-Banzhaf Exhibit No. 8,
4 Letter dated February 10, 1966,
5 was produced and marked for identification.)

6 BY MR. SCHURTMAN:

7 Q Now Mr. Banzhaf, I show you Plaintiff's Exhibit
8 7 for identification. Is this a letter that you wrote to
9 Mr. Allen?

10 A Yes, it is.

11 Q Was this pursuant to the discussions you had
12 with Mr. Allen and Mr. Finch at your January meeting?

13 A I don't even recall Mr. Allen being there. My
14 memory is fuzzy on the subject. This certainly is relative
15 to what came out of that meeting with Mr. Finch, yes.

16 Q I show you Plaintiff's Exhibit 8 for identifi-
17 cation. Is that the response you received from Mr. Allen?

18 A It sure is.

19 Q I notice there are some handwritten notations
20 in the upper right-hand corner of Plaintiff's Exhibit No. 8.
21 Is that your handwriting?

22 A That sure looks like it.

23 Q What do these notations mean, if anything?

24 A I haven't the foggiest notion.

25 Q Incidentally, I have difficulty with some of

1 your correspondence files in identifying who had written what.

2 Are those the initials of your secretary on Plaintiff's

3 Exhibit 7?

4 A Yes, Eleanor P. Duckworth.

5 Q Did you have any other secretary during 1966
6 and 1967?

7 A No. Now, wait a minute.

8 MR. PENNOYER: If you remember.

9 THE DEPONENT: I can't remember. Eleanor
10 Duckworth went up to the President's office at some time and
11 then Katherine Hollinger became my secretary. I can't remem-
12 ber just exactly when that occurred. It may have occurred in
13 1967.

14 BY MR. SCHURTMAN:

15 Q All right, if I find any initials I can't
16 identify, I will ask you. Who was the President of Armstrong
17 in January, 1966?

18 A Mr. M. J. Warnock.

19 Q What was Mr. Binns' position at that time?

20 A Senior Vice President.

21 Q Is Mr. Binns now the President of Armstrong?

22 A Yes.

23 Q Do you know whether either Mr. Warnock or Mr.
24 Binns met with Mr. Finch in January, 1966?

25 A I am sure they did not.

1 MR. SCHURTMAN: May I have the original of this?
2 Would you mark as Plaintiff's Exhibit 9 for identification a
3 three page memorandum which appears to be dated 1-6-66 and
4 bears the heading "Talk With Tom Finch." I am advised this
5 was produced from something referred to as the President's
6 File.

7 MR. KEIHNER: His office file as opposed to his
8 personal file.

9 (Plaintiff-Banzhaf Exhibit No. 9,
10 Memorandum dated 1-6-66, consist-
11 ing of three pages, was produced
12 and marked for identification.)

13 MR. SCHURTMAN: Off the record.

14 - - -

15 (Discussion off the record)

16 - - -

17 MR. PENNOYER: I will stipulate that the date
18 appearing on Plaintiff's Exhibit 9 for identification should
19 be 1-6-67 instead of 1-6-66.

20 BY MR. SCHURTMAN:

21 Q Can you identify the handwriting in this memo?

22 A Yes, I sure can.

23 Q Whose handwriting is it?

24 A Mr. M. J. Warnock's. I received a lot of such
25 notes.

(Discussion off the record)

1 BY MR. SCHURTMAN:

2 Q When was your next contact with Thomasville?

3 MR. PENNOYER: This is after the High Point
4 Chamber of Commerce?

5 BY MR. SCHURTMAN:

6 Q After the January, 1966 meeting and the corre-
7 spondence.

8 A It would be in the fall of the year. I think
9 it would be in the fall of the year. I think it was in Octo-
10 ber.

11 Q Before we get to the October meeting -- I assume
12 it was a meeting in October, was it not?

13 A It sure was.

14 Q We will move on to another area. First, do you
15 know the plaintiff, Harry Samuels?

16 A Yes.

17 Q When did you meet him for the first time?

18 A It was in the summer or early fall. It could
19 have been I would say August of 1966.

20 Q When had you first heard about Mr. Samuels?
21 Was it before you met him?

22 A Yes, before I met him.

23 Q In what context did you learn about him?

24 A I learned that we were thinking of employing
25 an advisor on acquisitions, acquisition methodology, somebody

1 to help us out with at that time our general acquisition pro-
2 gram.

3 Q From whom did you learn that?

4 A I can't recall whether I learned it from Mr.
5 Donnelly or Mr. Binns.

6 Q What did they tell you about Mr. Samuels?

7 MR. PENNOYER: If you recall.

8 THE DEPONENT: I just don't remember.

9 BY MR. SCHURTMAN:

10 Q Did they tell you that they wanted you to talk
11 to Mr. Samuels about the furniture industry?

12 A Not that I remember. My first -- well, I don't
13 remember. Not that I recall, no.

14 Q Do you know why they called Mr. Samuels to your
15 attention?

16 A Well, because I was part of an Acquisition
17 Evaluation Committee. I guess it was my job to know.

18 Q In the furniture industry?

19 A As a member of that committee. I just don't
20 recall and I can't answer for them.

21 Q What was the Acquisition Evaluation Committee?

22 A Well, it was a group of us who were really dis-
23 cussing the whole general approach of the company and
24 direction it was going to take for future growth. We were
25 evaluating different ideas, propositions, plans for growth,

1 trying to establish, as a result, a strategic plan for growth.

2 Q Do you recall who arranged the first meeting
3 with Mr. Samuels?

4 MR. PENNOYER: That is his meeting?

5 THE DEPONENT: My meeting with Mr. Samuels?

6 BY MR. SCHURTMAN:

7 Q Yes.

8 A I don't know whether it was Mr. Binns or Mr.
9 Donnelly. I know where we met. I don't recall who arranged
10 it.

11 Q I think you testified that the meeting took
12 place sometime in the summer of 1966?

13 A Right.

14 Q Where did it take place?

15 A Fred Donnelly's office.

16 Q In Lancaster?

17 A Right.

18 Q Does the date August 10, 1966 sound right?

19 A That is reasonable.

20 Q Who was present at this meeting?

21 A At my meeting with Mr. Samuels, just Fred
22 Donnelly. The initial meeting, yes.

23 Q Does your answer imply that there were other
24 meetings that same day that you did not attend?

25 A I think I went to lunch with them, as I recall.

1 Q To your knowledge, Mr. Samuels also met with
2 other Armstrong executives?

3 A I am sure he did.

4 Q Not in your presence?

5 A Not in my presence.

6 Q Have you read Mr. Samuels' deposition testimony?

7 A Not all of it, no.

8 Q You have read some of it?

9 A Some of it.

10 Q Mr. Samuels described a meeting in an office
11 which he characterized as having a sort of small living room
12 atmosphere. Do you know which office he was referring to?

13 A The only one I can recall is Mr. Donnelly's,
14 which is now mine.

15 Q Would it be fair to characterize that office as
16 having a small living room atmosphere? I haven't seen it,
17 so --

18 A It has a davenport in it.

19 Q What was discussed during the time that you were
20 with Mr. Samuels and Mr. Donnelly?

21 A Yes, I can explain that. In trying to establish
22 our direction of where we wanted to go in the furniture
23 industry, by that time I think we had pretty well determined
24 we did not want to be a supplier to the industry, we wanted
25 to be a manufacturer; furthermore, we wanted to make an

1 acquisition of some substance, and we really, I think, at that
2 time knew what we wanted to acquire.

3 But we also recognized that in entering any
4 industry we were not interested in the simple financial goals
5 of an industry. We felt that we must be able to make a con-
6 tribution, a contribution in marketing, technology, somewhere.

7 One of the ideas that we had and were seriously con-
8 sidering was acquiring a small company that made furniture
9 parts for other larger furniture manufacturers, with the idea
10 of using this almost as a pilot plant and then possibly adding
11 to it an assembly cabinet room finishing operation at some
12 possible future date, only, however, assuming that such an
13 acquisition would not prejudice or hinder our making a larger
14 acquisition.

15 I was instructed -- I think is the proper word--
16 to submit the financial details of that acquisition to Mr.
17 Samuels for his advice.

18 Q What was the name?

19 A Morgan Manufacturing Company.

20 Q And you discussed Morgan with Mr. Samuels?

21 A Right, specifically.

22 Q What did he say about it?

23 A He didn't think it was very good.

24 Q Did he say why?

25 A Yes, his forte or his special interest was to

1 buy a company at something less than its asset value. He
2 thought, I believe, that the price wasn't right and I don't
3 believe he fully understood what it was that we had in mind,
4 and I think he looked at it only as an acquisition which
5 didn't appeal to him.

6 Q Did you discuss any other possible acquisitions
7 with Mr. Samuels?

8 MR. PENNOYER: That day?

9 BY MR. SCHURTMAN:

10 Q At that meeting.

11 A At that initial meeting?

12 Q Yes.

13 A Not that I recall.

14 Q Well, did you discuss Armstrong's general
15 interest in entering the furniture industry?

16 A I am sure that was discussed but that must have
17 been later on that day. At that particular time all we were
18 discussing was Morgan, the initial --

19 Q When you talk about that particular time, you
20 mean the meeting in Mr. Donnelly's office?

21 A Right, exactly.

22 Q So no other aspects of the furniture industry
23 were discussed at that meeting?

24 A I don't recall any.

25 Q Now, the next time you saw Mr. Samuels that day

1 was at lunch?

2 A As I recall.

3 Q Where was that?

4 A Lancaster Country Club.

5 Q Who was present?

6 A I don't remember that precisely. I just don't
7 remember. Fred Donnelly was there, I am sure.

8 Q Was Mr. Warnock present?

9 A I don't believe so.

10 Q Mr. Binns?

11 A I don't believe so.

12 Q Mr. Ellis?

13 A He may have been.

14 Q How long did that luncheon take?

15 A An hour.

16 Q Now did you discuss the furniture industry at
17 that luncheon?

18 A As I recall, we discussed it.

19 Q What was said by whom?

20 A The reason I recall is that he, Mr. Samuels,
21 said something to us about the possibility of acquiring Mohasco
22 as a manufacturer both of furniture and carpet.

23 Q What specifically was discussed about Mohasco?

24 A Just the possibility of acquiring it, that he
25 knew Mr. Shuttleworth, and that he had been influential in Mr.

1 Shuttleworth's making an acquisition or acquisitions.

2 Q Did you and Mr. Donnelly tell Mr. Samuels that
3 you had been studying the furniture industry?

4 A Oh, yes, I am sure he knew that.

5 Q Did you tell him which companies you had been
6 studying?

7 A That I don't know. I didn't.

8 Q Do you know whether Mr. Donnelly did?

9 A No, I do not, no.

10 Q He did not do so in your presence?

11 A Not that I recall.

12 Q Did Mr. Samuels indicate to you that he had
13 handled prior acquisitions and mergers in the furniture
14 industry?

15 A Yes.

16 Q Did he name them?

17 A He named the one with Mohasco.

18 Q Any others?

19 A Not that I remember.

20 Q Had anyone indicated to you that Mr. Samuels
21 was supposed to have a certain degree of expertise in the
22 furniture industry?

23 MR. PENNOYER: Do you mean on that occasion?

24 THE DEPONENT: The way in which Mr. Samuels was
25 presented to me was as an acquisition expert, not necessarily

1 confined to the furniture industry, and indeed, as I recall,
2 he talked of many things.

3 BY MR. SCHURTMAN:

4 Q But was any reference made by anyone to the fact
5 that he had a certain degree of expertise in the furniture
6 industry?

7 MR. PENNOYER: Objection.

8 THE DEPONENT: I don't remember.

9 BY MR. SCHURTMAN:

10 Q Now in discussing the Mohasco possibility with
11 Mr. Samuels, was there any discussion of terms?

12 A No.

13 Q Or the manner in which such an acquisition
14 could be made?

15 A Not that I recall.

16 Q Stock, cash?

17 A Not that I recall.

18 Q Did you indicate to Mr. Samuels which furniture
19 companies you had looked at?

20 A I don't remember.

21 Q Specifically did you mention to him that you
22 had been down to Thomasville?

23 A I don't remember.

24 Q Did the name of Thomasville come up in the
25 conversation?

1 A I don't recall.

2 Q Did the names of any other furniture companies
3 come up in that conversation?

4 A I just simply don't remember. I don't recall
5 that much detail. I don't know.

6 Q Did the name of Tom Finch come up in that con-
7 versation?

8 A I don't remember. I don't recall that much.

9 Q After that luncheon meeting did you have any
10 other discussions with Mr. Samuels that day?

11 A Not that I remember, not that day that I remember.

12 Q When was your next contact with Mr. Samuels,
13 either personally or by telephone or by mail?

14 A Well, let's see, the next occasion that I can
15 remember specifically was someone had talked to him about a
16 large block of Kroehler stock that was available and he thought
17 we should pursue this, and even though we were not terribly
18 interested, lukewarm about Kroehler, he felt we should look
19 into it; and I went with Mr. Donnelly and Mr. Samuels to call
20 on the Kroehler people.

21 Q Where did you call on them?

22 A Chicago, outside of Chicago.

23 Q Do you remember when that visit took place?

24 A Not exactly. Sometime in the fall, but I don't
25 remember exactly.

1 Q Do you have any way of fixing the date?

2 A I can look in the records.

3 Q In what records would you look in?

4 A Correspondence files or whatever records we may
5 have.

6 Q Do you keep a diary or an appointment book?

7 A No.

8 Q You have neither a diary nor an appointment book?

9 A No.

10 Q So your only way of checking dates is to look
11 at correspondence?

12 A Yes.

13 Q Or file memos?

14 A That is right.

15 Q If there are any?

16 A Yes.

17 Q And you have no way of fixing the date?

18 A I think that would be correct.

19 Q Does the company maintain any sort of record
20 of the travel schedules of its executives?

21 A Expense accounts.

22 Q So that by checking in your expense account you
23 would be able to fix the day of that visit?

24 A Yes.

25 MR. SCHURTMAN: Mr. Keihner, could I ask you to

1 produce a memo dated September 19, 1966 from Mr. Donnelly to
2 Mr. Banzhaf, re: Kroehler?

3 MR. SCHURTMAN: Would you mark as Plaintiff's
4 Exhibit 10 for identification a copy of a memo dated September
5 19, 1966 from Mr. Donnelly to Mr. Banzhaf?

6 (Plaintiff-Banzhaf Exhibit No. 10,
7 Copy of memo dated September 19,
8 1966 to Mr. Banzhaf from Mr.
Donnelly was produced and marked
for identification.)

9 BY MR. SCHURTMAN:

10 Q Mr. Banzhaf, I show you Plaintiff's Exhibit 10
11 for identification. Does this refresh your recollection as to
12 when the meeting took place?

13 A It had to be the latter part of September.

14 MR. TRIGG: Off the record.

15 - - -

16 (Discussion off the record)

17 - - -

18 THE DEPONENT: According to this it had to be
19 the latter part of September.

20 BY MR. SCHURTMAN:

21 Q Before we get to that Kroehler visit, did you
22 have any other meetings with Mr. Samuels in Lancaster prior to
23 the latter part of September?

24 A I may have. I just don't remember. It would
25 be very incidental. Nothing that I recall.

1 Q Were you aware at the time that Mr. Donnelly
2 had entered into a written agreement with Mr. Samuels?

3 A That I knew.

4 Q Which was dated August 25?

5 A Yes, I knew he had an agreement with him.

6 Q Did you participate in the preparation of that
7 agreement?

8 A No.

9 Q Were you consulted about it?

10 A Not that I recall.

11 Q Were you present when the agreement was signed?

12 A No.

13 Q Do you know whether Mr. Samuels came to Lancaster
14 to sign it?

15 A No, I don't. He may have. I don't remember.

16 Q I take it you do not remember at this time
17 whether Mr. Samuels made any other visits to Lancaster be-
18 tween August 10 and the time you met him on the Kroehler visit?

19 A Not that I remember.

20 Q You don't remember whether he did?

21 A Or he didn't.

22 Q How long was that Kroehler visit? Or to put
23 the question more accurately --

24 A We stayed overnight so it would have been going
25 out, the visit -- either we went out and stayed overnight and

1 then visited Kroehler and came back the next day, which I am
2 inclined to think we did, or else we saw the Kroehler people,
3 stayed overnight, and came home. I don't remember.

4 Q But the people on that visit were you, Mr.
5 Donnelly, and Mr. Samuels?

6 A Right.

7 Q In the course of that visit did you have occasion
8 to discuss the furniture industry in general?

9 A I am sure we did.

10 Q And Kroehler's position in the furniture in-
11 dustry?

12 A I am sure we did.

13 Q Did you compare Kroehler with other companies in
14 the industry?

15 A I am certain that we did.

16 Q Do you remember comparing Kroehler with Johnson-
17 Carper?

18 A I can't specifically, but I wouldn't doubt it at
19 all.

20 Q Do you remember comparing Kroehler with Thomas-
21 ville?

22 A Again, I don't recall, but it certainly would
23 not be unlikely.

24 Q Do you recall any other discussions concerning
25 either Johnson-Carper or Thomasville during that visit?

1 MR. PENNOYER: Objection.

2 THE DEPONENT: At some time, and it could have
3 been that visit or subsequently, I don't recall, Mr. Samuels
4 mentioned the possibility of Johnson-Carper to us and it could
5 have been at that time.

6 BY MR. SCHURTMAN:

7 Q Did he also mention the possibility of Thomas-
8 ville to you?

9 A Not that I recall. This I don't recall. One
10 of the reasons I don't recall --

11 MR. PENNOYER: Just answer the question.

12 THE DEPONENT: I don't remember.

13 BY MR. SCHURTMAN:

14 Q What was one of the reasons you don't recall?

15 A Thomasville was in a very special category as
16 far as I was concerned, and this was something that, well,
17 this was my number one objective, and any interest I had in
18 what Mr. Samuels could contribute, if that had failed, if we
19 were not able to get together with Thomasville, any other
20 alternative would have been a second possible course of action.

21 Q In what sense did you regard Thomasville as a
22 special category?

23 A In analyzing the industry, going back several
24 years, this in my opinion was the number one firm in the
25 industry, the one that was most compatible with Armstrong Cork

1 Company, and had an excellent profitability rate, and we
2 thought it would be an ideal acquisition for us to make.

3 Q But I take it up to the end of September, 1966,
4 when you visited Kroehler, except for the conversation you had
5 with Mr. Finch in January, 1966, as to which you have already
6 testified, you had had no discussion with Thomasville about
7 the possibility of an acquisition or merger, is that correct?

8 A We had not, that is correct.

9 Q Did you discuss any of the other large furni-
10 ture manufacturers with Mr. Samuels during the Kroehler visit?

11 A In all probability we did.

12 Q How much time did you spend with Mr. Samuels
13 during that visit, at least a day?

14 A Yes.

15 Q I take it you had, shall we say, a rather
16 thorough discussion about the furniture industry in general
17 during the time you spent with Mr. Samuels?

18 MR. PENNOYER: Objection.

19 THE DEPONENT: I certainly would guess so.

20 BY MR. SCHURTMAN:

21 Q Did you tell Mr. Samuels, during your dis-
22 cussion on the Kroehler visit, that you had been in touch
23 with Thomasville?

24 A I don't remember.

25 Q What happened to the Kroehler investigation?

1 A Neither their management nor our management were
2 very interested.

3 Q Did you say were interested?

4 A Were not interested.

5 MR. SCHURTMAN: Mr. Pennoyer, would you produce
6 a handwritten memo on the letterhead of Max Banzhaf dated
7 10-6-66?

8 MR. PENNOYER: This is the memorandum I think
9 you are asking for.

10 MR. SCHURTMAN: Thank you. Would you mark as
11 Plaintiff's Exhibit 11 for identification a handwritten memo on
12 the stationery of Max Banzhaf dated 10-6-66 addressed to Fred?

13 (Patient-Banzhaf Exhibit No. 11,
14 Memo dated 10-6-66, addressed to
15 Fred from Max Banzhaf, was produced
and marked for identification.)

16 BY MR. SCHURTMAN:

17 Q Mr. Banzhaf, I show you Plaintiff's Exhibit 11
18 for identification. Is that your handwriting?

19 A Yes, it is.

20 Q Is that a memo that you addressed to Fred
21 Donnelly?

22 A Yes, it is.

23 Q I notice that on the top of the memo there is
24 a handwritten notation saying: File Samuels. Is that your
25 handwriting?

1 A No.

2 Q Do you know whose handwriting that is?

3 A It looks like Fred Donnelly's.

4 Q Do you know whether he maintained a special file
5 on Mr. Samuels?

6 A I don't know that. It certainly would look
7 like it.

8 Q Does this refresh your recollection as to when
9 the Kroehler deal fell through, to use the vernacular?

10 A October 6, 1966.

11 Q You have a notation in there saying "Harry
12 Fields may try to but it." Am I reading it correctly?

13 A Yes.

14 Q Do you remember what that referred to?

15 A I think that refers to that block of stock that
16 he was talking about that, as I recall, was held by someone
17 outside of the Kroehler family, and the feeling was, as I
18 recall, that Mr. Samuels felt that the Kroehler family may
19 try to buy the block of stock and Harry thought maybe he
20 could buy it on his own account.

21 Q Now, once the Kroehler possibility fell through,
22 did you discuss any other possible acquisitions in the furni-
23 ture field with Mr. Samuels?

24 A I don't recall of any. There was the Johnson-
25 Carper deal possibility that Fred and I looked at.

1 Q When you say Fred, you refer to Mr. Donnelly?

2 A Yes.

3 Q Did you and Mr. Donnelly visit Johnson-Carper?

4 A Yes, we did.

5 Q When was that?

6 A I don't remember exactly. It could have been--

7 I don't recall. I just don't remember. It could have been

8 before that time, after that time, I don't remember. There

9 was one --

10 MR. PENNOYER: Wait for the question.

11 BY MR. SCHURTMAN:

12 Q Is this still in response to my last question?

13 A You asked me a question, did you not, were
14 there others?

15 Q Yes.

16 A And there were two. Johnson-Carper was one
17 and there was one other, a little company in Macon, Georgia.

18 Q What was the name of that company?

19 A I can't remember. I never even looked at it.

20 Q Was it the Art Furniture Company?

21 A That is right.

22 Q Did you meet with anyone at Art Furniture?

23 A No.

24 MR. SCHURTMAN: Mr. Keihner, could you produce
25 a letter dated September 28, 1966 from Mr. Banzhaf to

1 Johnson-Carper which I think might fix the date of that visit?

2 MR. PENNOYER: I hand you the pink copy of that
3 letter.

4 MR. SCHURTMAN: Would you mark a copy of a letter
5 from Mr. Banzhaf to Johnson-Carper Furniture Company dated
6 September 28, 1966 as Plaintiff's Exhibit 12?

7 (Plaintiff-Banzhaf Exhibit No. 12,
8 Copy of letter dated September 28,
9 1966, to Johnson-Carper Furniture
Company from Mr. Banzhaf, was pro-
duced and marked for identification.)

10 BY MR. SCHURTMAN:

11 Q Mr. Banzhaf, I show you Plaintiff's Exhibit 12
12 for identification. Does this refresh your recollection that
13 the meeting at Johnson-Carper took place on September 27?

14 A Yes, because it was following a board meeting
15 and we stopped off on the way back, that is right.

16 Q What happened to the Johnson-Carper investiga-
17 tion?

18 A Really we weren't all that interested in
19 Johnson-Carper.

20 Q Had Mr. Samuels called Johnson-Carper to your
21 attention?

22 A He had to have something to do with it, and I
23 just can't remember exactly. Obviously I knew of Johnson-
24 Carper but we went there under his arrangement.

25 Q Do you recall asking Mr. Samuels whether he

1 could find out whether Mr. Finch would be interested in merg-
2 ing Thomasville with Armstrong?

3 A That question I never asked him.

4 Q Did you have any discussion with him regarding
5 that? In other words, I may not be using the exact words you
6 might have used.

7 A No, I sure didn't.

8 Q Did anyone else in your presence?

9 A Not to my knowledge.

10 Q Do you recall having a discussion with Mr.
11 Samuels about the problems that would be created if Thomas-
12 ville were to be acquired by Armstrong?

13 MR. PENNOYER: Objection.

14 THE DEPONENT: I don't recall any, no.

15 BY MR. SCHURTMAN:

16 Q Were you aware at the time that Mr. Finch was
17 the major stockholder of Thomasville?

18 MR. PENNOYER: What time?

19 MR. SCHURTMAN: We are talking about September,
20 October of 1966.

21 THE DEPONENT: The Finch family, yes, sure.

22 BY MR. SCHURTMAN:

23 Q Had you had any discussions with any Armstrong
24 executives regarding the problems that would be created if
25 Mr. Finch became a major stockholder of Armstrong by reason of

1 acquisition or merger?

2 A There were no problems as far as I know. We
3 had discussed Thomasville. There were no problems that I
4 know of, of any consequence.

5 Q When had you discussed Thomasville and with
6 whom?

7 A I discussed Thomasville with Mr. Binns specifi-
8 cally on a number of occasions throughout, I would say, at
9 least from the latter part of 1965 through 1966.

10 Q What was the substance of your discussion?

11 A One of the things that we wanted to do was to
12 get Mr. Finch to Lancaster, that was one of the things we
13 were trying to do -- we would be interested, of course, in
14 getting any of his people here -- one of the reasons being
15 that our major facilities, our research, our styling, and so
16 forth, are here in Lancaster, and in order to demonstrate
17 what contribution we might bring to the industry or any
18 arrangement, you had to get the person here.

19 Simultaneously with that we were formulating
20 our plans and our strategies, our tactics and so forth, and
21 I had many discussions with Mr. Binns about Thomasville.

22 Q In these discussions did you touch upon the
23 fact that if you had a stock for stock exchange, Mr. Finch
24 would become either the largest or one of the largest stock-
25 holders of Armstrong?

1 A We had talked about that. He and his family,
2 yes, sure.

3 Q When you say you talked about that, did you
4 come to any conclusions about that?

5 A It didn't seem to represent all that great a
6 problem as far as I know.

7 ✓ Q Did anyone indicate that it might create a
8 problem?

9 ✓ A Oh, they may have. I don't recall. Not one
10 of significance.

11 MR. SCHURTMAN: Incidentally, although I think
12 it is covered by the rules, Mr. Pennoyer, I would like to
13 note for the record that when I question the witness about
14 conversations with other Armstrong executives I do not mean
15 by that to waive my objections to the admissibility of any
16 such conversations in evidence.

17 MR. PENNOYER: We are operating under the
18 Federal Rules. I am not quite sure I understand what you
19 mean. But I certainly assume that the Federal Rules apply,
20 and whatever right you have to ask questions without being
21 bound by them, you have. But I am not agreeing to give you
22 such right unless the rules so provide.

23 MR. SCHURTMAN: I am simply noting it for the
24 record so that if the question should come up in trial, at
25 least I can point to the record and say I said so.

1 Off the record.

2 - - -

3 (Discussion off the record)

4 - - -

5 BY MR. SCHURTMAN:

6 Q I believe you indicated earlier in your testi-
7 mony that you did have another meeting with Mr. Finch in
8 October of 1966.

9 A Yes.

10 Q Do you remember the date of that meeting?

11 A The exact date, no, I don't. Early in October.

12 MR. SCHURTMAN: I think the records indicate
13 that the date was October 18, 1966. There is no mystery
14 about it.

15 MR. PENNOYER: I don't know. Why don't you
16 develop it.

17 MR. SCHURTMAN: All right, I will develop it.

18 BY MR. SCHURTMAN:

19 Q Does the date of October 18, 1966 refresh your
20 recollection?

21 A I can't remember that precisely.

22 Q Do you remember going down to Winston-Salem?

23 A Yes, sir.

24 Q With whom did you go?

25 A I went with Fred Donnelly and Les Ellis.

1 Q What was Mr. Ellis' position?

2 A He was Vice President and Controller.

3 Q Where did the meeting take place?

4 A It took place in the offices of the Wachovia
5 Bank.

6 Q Who had arranged the meeting?

7 A Mr. John Watlington of the Wachovia Bank.

8 Q Do you know Mr. Fentress?

9 A Yes, Robert Fentress.

10 Q Who is he?

11 A He is an officer of Wachovia.

12 Q Had he also participated in arranging the
13 meeting?

14 A He may have but I am sure it was Mr. Watlington
15 that made the final arrangements.

16 Q Did anyone at Armstrong ask Mr. Watlington to
17 set up the meeting with Mr. Finch?

18 A Yes, sir.

19 Q Who did?

20 A Fred Donnelly at my specific request.

21 Q What did you ask Mr. Donnelly to do?

22 A I requested him to request John Watlington to
23 set up the meeting.

24 Q Did you tell Mr. Donnelly for what purpose you
25 wanted to meet him?

1 A Yes, sir.

2 Q What did you say?

3 A I wanted to at that time be quite specific in
4 making an offer to Mr. Finch.

5 Q An offer to acquire Thomasville?

6 A Right.

7 Q Were you present when Mr. Donnelly contacted
8 Mr. Watlington?

9 A Yes.

10 Q Did you talk to Mr. Watlington in advance of
11 that meeting?

12 A Yes.

13 Q When?

14 A Mr. Donnelly and I visited the Wachovia Bank
15 sometime prior to that, the date I can't tell you exactly,
16 and we talked to Bob Fentress, Higginbotham, another man, and
17 to John Watlington, at which time I told Mr. Watlington of
18 our interest in the furniture business, what we felt we could
19 contribute to it, and our great interest in Thomasville.

20 Q Can you fix the date of that earlier meeting
21 with somewhat more specificity?

22 A My mind isn't that accurate. I would guess
23 two, three weeks prior to that time.

24 MR. SCHURTMAN: Unless I overlooked it, I did
25 not come across any document fixing the date of the earlier

1 meeting, the one that preceded the October 18 meeting. If
2 there is such a document I would ask that it be produced.

3 MR. PENNOYER: If you will look at a copy of
4 a letter of October 11, 1966 from Donnelly to Fentress, you
5 will see reference to an earlier conversation but not to an
6 earlier meeting at Wachovia Bank.

7 MR. SCHURTMAN: Yes, I saw that. Well, let me
8 mark the letter you have just shown me as Plaintiff's Exhibit
9 13 for identification. This is a copy of a letter dated
10 October 11, 1966 from Mr. Donnelly to Mr. Fentress of Wachovia.

11 (Plaintiff-Banzhaf Exhibit No. 13,
12 Letter dated October 11, 1966 to
13 Mr. Fentress from Mr. Donnelly was
produced and marked for identifi-
cation.)

14 BY MR. SCHURTMAN:

15 Q I show you Plaintiff's Exhibit 13 for identifi-
16 cation. Mr. Pennoyer called attention to the first couple of
17 lines in that letter. Does the earlier conversation refer to
18 a meeting that you had at Winston-Salem?

19 A I am sure it does, yes. That could be. It
20 could refer to the earlier meeting we had or it could refer
21 to a telephone conversation, I don't know. There is no way.
22 We were there, however.

23 Q Who was present at the earlier meeting?

24 A Fred Donnelly and I.

25 Q Who on behalf of Wachovia?

1 A Claude Higginbotham. We met a lot of people
2 that day. Claude Higginbotham, however, I believe, was the
3 man we spent the most time with.

4 Q What was his title at the bank?

5 A I don't remember.

6 Q Was he one of the officers of the bank?

7 A Yes.

8 Q Did you discuss Thomasville with him?

9 A Yes.

10 Q Did you tell him you wanted to acquire Thomas-
11 ville?

12 MR. PENNOYER: In those words, you mean?

13 BY MR. SCHURTMAN:

14 Q In words or in substance.

15 A Our interest was pretty well known at that time,
16 yes.

17 Q What did you tell him? When you say your
18 interest was pretty well known, how do you know what they
19 knew?

20 A Well, pretty well known to us. I am sure that
21 our interest in Thomasville was conveyed. We talked about
22 a lot of things on that particular day.

23 Q Did you tell him at the time that you want
24 him to set up a meeting with Tom Finch?

25 A I think that was done later on, but it was

1 there in our conversation with John Watlington that I think
2 we arrived at the best time being the Wachovia board meeting
3 when Mr. Finch would be in Winston-Salem.

4 Q Did you know that Mr. Watlington was a director
5 of Thomasville?

6 A Yes.

7 Q Had he indicated to you that he would be in-
8 terested in seeing a merger between Thomasville and Armstrong?

9 A He sure did.

10 Q Did he indicate that he would try to help bring
11 about such a merger?

12 A He sure did.

13 Q And you say he indicated that to you prior to
14 the meeting on October 18?

15 A Yes, sir.

16 MR. SCHURTMAN: I would like to try to fix the
17 date of that earlier meeting with Mr. Higginbotham. Apparent-
18 ly there is no correspondence referring to it. The witness
19 testified previously that he can fix the dates of trips by
20 looking at expense vouchers.

21 MR. PENNOYER: We don't have the expense
22 vouchers here but why don't you leave a blank space in the
23 deposition and if we can find a record which will indicate
24 the date of the trip, Mr. Banzhaf will insert the date at the
25 time he signs the deposition.

1 MR. SCHURTMAN: All right, and if there is a
2 voucher referring to it, perhaps I could get a copy of it at
3 that time.

4 MR. PENNOYER: Very well.

5
6 MR. TRIGG: I am not sure that we are prepared
7 to commit that we will furnish a copy of that voucher at this
8 time because I don't know what else may be referred to in it.

9 MR. PENNOYER: We will supply that portion of
10 the voucher which relates to this trip.

11 MR. TRIGG: That is right.

12 MR. SCHURTMAN: I am not interested in dollars
13 and cents.

14 MR. TRIGG: When counsel says very well, I shy
15 away from a waiver, as you do.

16 THE DEPONENT: May I amend the statement that
17 I made?

18 BY MR. SCHURTMAN:

19 Q Which statement? Well, amend whatever state-
20 ment you wish to amend.

21 A You asked me about Mr. Watlington's interest
22 in seeing that we get together, the date of it, and I replied
23 that it was prior to this meeting. I can't fix that date
24 that certainly. I don't know that that was exactly the time
25 that he thoroughly endorsed the possibility of our getting

1 together. I can't say that.

2 I don't know that I can fix that date that
3 precisely, whether it was then or the subsequent date that
4 we got together, but the fact that he did that, I do know.
5 I can't fix the date that accurately.

6 Q At the October 18th meeting you and Mr. Donnelly
7 and Mr. Ellis flew down to Winston-Salem?

8 A Yes.

9 Q And went to the Wachovia Bank and Trust Company?

10 A Yes.

11 Q And you met with Mr. Finch that day?

12 A Yes.

13 Q Did you meet with any other Thomasville
14 executive?

15 A No.

16 Q Where did you meet with Mr. Finch?

17 A In one of the offices in the Wachovia Bank
18 Building.

19 Q Who was present at that meeting?

20 A Mr. Finch, Mr. Ellis, Mr. Donnelly and myself.

21 Q Was Mr. Watlington present?

22 A No.

23 Q No one from the Wachovia Bank was present?

24 A No.

25 Q What did you discuss at that meeting?

1 A I told Mr. Finch that we had determined pre-
2 cisely the areas in which we felt we could make a significant
3 contribution to the furniture industry both in manufacturing
4 and in marketing. I tried to describe those in some detail.

5 I told him that I thought that while we had
6 this knowledge and expertise, that we could bring to the
7 industry, that the furniture industry, after all, was in a
8 large part art, not all science, and that we considered
9 Thomasville to be the leading manufacturer in the industry
10 so far as we were concerned, and that the two companies were
11 quite compatible; and I felt that bringing the art that the
12 Thomasville people had in marriage with the science that I
13 felt we had in technology that could be applied and marketing,
14 we could make considerable progress, and I would like him to
15 entertain the idea of merging.

16 Q What did he say.

17 A I can almost recall his words exactly. He said:
18 Up until this moment I have always thought we would go it
19 alone, but right now I am not sure.

20 Q Was that the extent of what he said?

21 A That was the essence of it.

22 Q Did he discuss possible merger terms?

23 A No.

24 Q You didn't get into any details?

25 A No, what we were trying to do, as I said

1 earlier, was to get him to come to Lancaster to see the
2 facilities we had and this was the thing I wanted him to do
3 next.

4 Q What did Mr. Donnelly and Mr. Ellis say, if
5 anything?

6 A Nothing.

7 Q You were the one who did all the talking?

8 A I did all of it.

9 Q Did the name of Mr. Samuels come up at that
10 meeting?

11 A No.

12 Q It did not?

13 A No.

14 BY MR. PENNOYER:

15 Q Do you mean yes, it did not, or no, it did not?

16 A I don't know how to answer that question. The
17 name did not come up.

18 BY MR. SCHURTMAN:

19 Q Prior to that meeting on October 18th had you
20 had any discussion with Mr. Donnelly as to whether Mr.
21 Samuels was involved in the Thomasville situation in any way?

22 A I certainly don't recall of any.

23 Q You had not discussed with Mr. Donnelly any-
24 thing about Mr. Samuels insofar as Thomasville was concerned
25 prior to October 18th? I just want to fix that.

1 A I may have. It might even be likely that I had.
2 I cannot recall the specific circumstances nor the nature of
3 the discussion. My memory is not that accurate.

4 MR. SCHURTMAN: Mr. Pennoyer, I asked you if
5 you could produce the original of a copy of a letter from Mr.
6 Samuels to Mr. Benzhaf, -- when I say copy, I mean the copy
7 that was sent to Mr. Donnelly -- dated October 10, 1966,
8 which was previously marked when Armstrong took Mr. Samuels'
9 deposition, as Defendant's Exhibit EEE, I believe.

10 MR. PENNOYER: I hand you Defendant's Exhibit
11 EEE for identification. Off the record.

12

- - -

13

(Discussion off the record)

14

- - -

15

16 MR. SCHURTMAN: Mr. Pennoyer has just produced
17 the exhibit again as a plaintiff's exhibit in this deposition.
18 We simply refer to it as Defendant's Exhibit EEE.

19

MR. PENNOYER: Agreed.

20

BY MR. SCHURTMAN:

21

22 Q I show you Defendant's Exhibit EEE for identi-
23 fication. I assume you are familiar with the original of the
24 letter dated October 10, 1966 from Mr. Samuels addressed to
25 you. Or perhaps I shouldn't assume it. Are you familiar
with it?

26

A Yes.

1 Q You received that letter?

2 A Yes.

3 Q Now the copy I am showing you appears to be a
4 carbon copy that was addressed by Mr. Samuels to Mr. Donnelly
5 and you will notice that there is a handwritten postscript at
6 the bottom of that copy. Have you seen this postscript be-
7 fore?

8 A I think I have.

9 Q When did you see it?

10 A I don't remember.

11 Q At about the time Donnelly received it?

12 A I don't recall whether I have seen this in the
13 documents. I don't remember.

14 Q Did Mr. Donnelly discuss that postscript with
15 you at or about the time he received it?

16 A Not that I remember.

17 Q Did he discuss with you in words or substance
18 the fact that Mr. Samuels had suggested that it might not be
19 a good idea to set up a meeting with Mr. Finch through a bank
20 executive?

21 A I don't remember his discussing that with me.
22 I don't remember that at all.

23 Q Does this refresh your recollection as to any
24 discussion you may have had with Mr. Donnelly at about this
25 time, October 10, 1966, regarding Mr. Samuels' views on how

1 to set up a meeting with Mr. Finch in Thomasville?

2 A No, because I wasn't interested in Mr. Samuels'
3 views.

4 Q That is not quite my question. It does not
5 refresh your recollection?

6 A No.

7 Q In any way?

8 BY MR. PENNOYER:

9 Q Do you mean yes, it does not, or no, it does
10 not?

11 A I do not recall of any.

12 MR. SCHURTMAN: Either I lost it or I didn't
13 get it, I am missing the part on the back. I wonder if at
14 some point I could have a Xerox of the back of this letter.
15 I have a Xerox of the front. This one line on the back. I
16 hope you don't mind.

17 MR. PENNOYER: We will do that.

18 BY MR. SCHURTMAN:

19 Q Getting back to the October 18th meeting with
20 Mr. Finch, how did you finally leave matters?

21 A He was to set a date to come to Lancaster.

22 Q Upon your return to Lancaster, did you prepare
23 any memorandum of your conversation with Mr. Finch?

24 A I don't remember. I may well have, either as
25 a report to the President's Office or to the Acquisition

1 Evaluation Committee. I don't recall. I am inclined to
2 believe it would be the latter.

3 MR. SCHURTMAN: Excuse me, I had these things
4 set up for Mr. Donnelly. I will have to organize them.

5 MR. PENNOYER: Could we take a three minute
6 break?

7 - - -
8 (Short recess)

9 - - -
10 MAX BANZHAF, resumed.

11 BY MR. SCHURTMAN:

12 Q Mr. Banzhaf, do you know a Mr. Mewborne of
13 Wachovia Bank and Trust Company?

14 A Bill Mewborne?

15 Q Yes.

16 A Not Amos?

17 Q No, a Mister.

18 A I thought you said Amos. Mr. Mewborne, yes,
19 I do.

20 Q Did you have a meeting with Mr. Mewborne in
21 Lancaster on November 2, 1966?

22 A I think so, yes.

23 Q I don't believe we have to mark this. This
24 appears to be a letter confirming such a meeting.

25 A Yes.

1 Q Did that meeting have anything to do with
2 Thomasville?

3 A I can't even remember why he was here. I don't
4 know. I can't remember why he was here. I don't know.

5 Q I will show you a copy of another letter. I
6 don't think it is necessary to mark it unless the testimony
7 requires that it be marked. It is a letter dated November 4,
8 1966 from Mr. Mewborne, Assistant Cashier of Wachovia, to
9 Mr. Banzhaf. Does this refresh your recollection as to what
10 the object of the meeting was?

11 A That doesn't help me. I don't know why he was
12 here. I can't remember. I don't know. That doesn't help at
13 all.

14 MR. SCHURTMAN: I would like to mark the
15 minutes of the Acquisition Evaluation Committee of Armstrong
16 of October 25, 1966, Pages 34 and 35.

17 MR. PENNOYER: I hand you those minutes.

18 MR. SCHURTMAN: We will mark them as Plaintiff's
19 Exhibit 14 for identification.

20 (Plaintiff-Banzhaf Exhibit No. 14,
21 Pages 34 and 35 of Minutes of
22 Acquisition Evaluation Committee,
was produced and marked for identification.)

23 BY MR. SCHURTMAN:

24 Q Mr. Banzhaf, I show you Plaintiff's Exhibit 14
25 for identification. Are those the minutes of the meeting

1 that took place on October 25, 1966? The year is not given
2 on the minutes but I assume it must have been 1966. Is that
3 correct?

4 A That is correct.

5 Q The last paragraph on the first page refers to
6 a report given by you to the committee.

7 A Yes.

8 Q Did you give any written reports to the
9 committee or was it purely an oral report?

10 A It was oral. These are the minutes.

11 Q Were any stenographic minutes kept of the
12 meeting?

13 A No.

14 Q Who prepared the minutes?

15 A A. G. Matamoros.

16 Q And he simply took notes during the meeting?

17 A Yes.

18 Q In the course of your report concerning
19 Thomasville what did you tell the committee?

20 A I told the committee what I told Mr. Finch and
21 Mr. Finch's response, and that he had indicated he would
22 come to Lancaster and we would carry on from there.

23 Q Did you express any prognosis of your own?

24 A Well, hope, maybe.

25 Q What was the hope that you expressed?

1 A That it would be concluded favorably.

2 Q Did you indicate to the committee anything
3 specifically that led you to hope that there would be a
4 favorable conclusion?

5 A Well, I would have to say that after my hoping
6 to find some basis for his visiting Lancaster for quite some
7 time, that he had indicated that he would do so, and that
8 was optimism, some reason for hope.

9 Q Did you report to the committee that Mr. Finch
10 had stated that up to that point Thomasville had wanted to
11 go it alone?

12 A I think he said, I assumed that we would go it
13 alone. I can't recall. I am sure I did but I don't recall
14 specifically.

15 Q Did the name of Mr. Samuels come up at that
16 meeting?

17 A Not that I recall.

18 Q Did you tell them that you had gone to visit
19 the Kroehler Company with Mr. Samuels?

20 A I am sure we did.

21 Q Then the name of Mr. Samuels did come up at the
22 meeting?

23 A I thought you meant in connection with Thomas-
24 ville.

25 Q Let's take it one by one. I take it the name

1 of Mr. Samuels did come up at the meeting?

2 ✓ A It must have, yes.

3 Q In connection with Kroehler?

4 A Right.

5 Q And in connection with Johnson-Carper?

6 V A I would presume.

7 Q Now, did it also come up in connection with
8 Thomasville?

9 2 A I don't believe so.

10 Q When was the next time you met with Mr. Finch?

11 MR. PENNOYER: After --

12 BY MR. SCHURTMAN:

13 Q After October 18, 1966.

14 A I believe it must have been in January of '67,
15 early in January, when we were finally able to get together
16 on a date for his visit here.

17 Q And early in January Mr. Finch visited
18 Lancaster?

19 A Yes, he did.

20 Q Was he accompanied by any other Thomasville
21 executive?

22 A Yes, Mr. James Dorety and Mr. Jennings.

23 Q During the course of his visit did you discuss
24 with Mr. Finch or any of the Thomasville executives the
25 possibility of a merger or acquisition?

1 A That was the purpose of the visit.

2 Q When did you discuss the possibility of a merger
3 or acquisition? At what stage of the visit?

4 A I don't know. I don't recall that.

5 MR. SCHURTMAN: Mr. Pennoyer, could I ask you
6 to show the witness Plaintiff's Exhibit 3 for identification?

7 BY MR. SCHURTMAN:

8 Q I show you Plaintiff's Exhibit 3 for identifi-
9 cation which is a schedule of the Thomasville visit to
10 Armstrong on January 4, 5, and 6, 1967. You are familiar
11 with this schedule, are you not?

12 A I sure am.

13 Q This was a schedule prepared by Armstrong?

14 A Yes.

15 Q For the guidance of Mr. Finch and the Thomas-
16 ville executives?

17 A Right.

18 Q Now, would you go through that schedule and
19 point out the meeting or meetings at which acquisition
20 possibilities were discussed?

21 A The purpose of the visit was for Mr. Finch to
22 look at our facilities, look at what we had to offer, for
23 what contribution it would make to a merger. In that sense
24 the whole meeting was directed to that purpose.

25 Negotiations were, I am sure, not entered into

1 at that time. This was not for the purpose of negotiating an
2 acquisition coming to final financial relationships. That
3 was not the purpose of the meeting.

4 So I don't know that I can be specific in the
5 answer to your question. If there was any discussion of that
6 kind, it would have been held by Mr. Warnock and Mr. Finch
7 at some odd interval I am not familiar with. Toward the end
8 of the meeting that might have happened but I am not familiar
9 with that.

10 Q Did there come a time during the course of this
11 visit when you and Mr. Finch and possibly other executives
12 sat down and said in words or substance: Well, you have
13 looked at the Armstrong facilities. Now, what do you think
14 about a merger or acquisition?

15 A There may well have been such a question asked
16 of Mr. Finch. I did not ask it. I assume, and I think really
17 the purpose of this was to get them thoroughly familiar with
18 our company and what we had to offer, with the kind of meet-
19 ing you are suggesting to take place at another time.

20 Q Do you know whether the name of Mr. Samuels
21 came up in any of your discussions with Mr. Finch during
22 that January, 1967 visit?

23 A I am virtually certain it did not.

24 Q Mr. Finch did not ask you about Mr. Samuels,
25 did he?

1 A No.

2 Q Do you know a Lester Mandelbaum?

3 A Yes.

4 Q Who is he?

5 A He works for the First National Bank of Chicago.

6 Q Do you know whether you or anyone at Armstrong
7 asked Mr. Mandelbaum to look into the possibility of acquir-
8 ing Thomasville?

9 ✓ A We did not.

10 MR. SCHURTMAN: Would you show the witness
11 Plaintiff's Exhibit 2 for identification, please? That is
12 a letter dated October 26, 1966 from Mr. Mandelbaum to Mr.
13 Donnelly with a copy to Mr. Banzhaf.

14 BY MR. SCHURTMAN:

15 Q Are you familiar with that letter?

16 A Yes, I am.

17 Q I direct your attention to the second paragraph,
18 specifically the last two lines of the second paragraph. Do
19 you know or do you have any information as to how Mr.
20 Mandelbaum knew that you were interested in Thomasville?

21 A Fred and I had talked to Mr. Mandelbaum in
22 Chicago about our general interest in the furniture industry
23 quite some time before.

24 Q Had you talked to him specifically about your
25 interest in Thomasville?

1 A I think in our discussions with him we were
2 purposely more vague than that.

3 Q Did you ever have occasion to ask Mr. Finch
4 whether he had given Mr. Mandelbaum the information reflected
5 in the third paragraph?

6 A No.

7 Q Did you ever discuss Mr. Mandelbaum with Mr.
8 Finch?

9 A No.

10 ? MR. SCHURTMAN: Mr. Pennoyer, would you produce
11 the letter dated January 11, 1967 from Mr. Donnelly to Mr.
12 James Badger, Vice President of First National Bank of
13 Chicago, a copy of which was sent to Mr. Banzhaf, and we
14 will mark that as Plaintiff's Exhibit 15 for identification.

15 MR. KEIHNER: It was sent to Mr. Badger by Mr.
16 Donnelly.

17 MR. SCHURTMAN: Yes.

18 MR. PENNOYER: I produce a yellow copy of that
19 letter.

20 (Plaintiff-Banzhaf Exhibit No. 15,
21 Copy of letter dated January 11,
22 1967 to Mr. James Badger from Mr.
Donnelly was produced and marked
for identification.)

23 BY MR. SCHURTMAN:

24 Q Mr. Banzhaf, I show you Plaintiff's Exhibit 15
25 for identification. Have you seen that before?

1 A There is a copy marked to me. I just don't
2 recall it.

3 Q Do you know what brought about this letter from
4 Mr. Donnelly to Mr. Badger?

5 A I haven't the faintest idea.

6 Q Did you discuss it with Mr. Donnelly?

7 A I don't recall.

8 Q Between the Kroehler visit at the end of
9 September, 1966, and just to use a cutoff date, January 31,
10 1967, did you have any conversations with Mr. Samuels or any
11 meetings with Mr. Samuels?

12 A I may have. I don't recall. I just don't
13 remember.

14 Q Do you remember discussing Thomasville with
15 Mr. Samuels during that period?

16 A No.

17 Q Did you tell Mr. Samuels at any time during
18 this period that you had met Mr. Finch in North Carolina?

19 A Not that I remember.

20 Q Did you tell him that Mr. Finch had visited
21 Lancaster?

22 A I don't know, I don't recall that.

23 Q Did you ever tell that to Mr. Samuels?

24 A I don't remember it.

25 Q Did you ever tell Mr. Samuels that Armstrong

1 was interested in acquiring Thomasville?

2 A I don't remember doing so.

3 MR. SCHURTMAN: Would you produce a letter from
4 Mr. Finch to Mr. Banzhaf dated January 19, 1967, which I will
5 ask the Reporter to mark as Plaintiff's Exhibit 16 for identi-
6 fication.

7 MR. PENNOYER: I produce the original of that
8 letter.

9 (Plaintiff-Banzhaf's Exhibit No. 16,
10 Letter dated January 19, 1967 to
11 Mr. Banzhaf from Mr. Finch was pro-
12 duced and marked for identification.)

12 BY MR. SCHURTMAN:

13 Q I show you Plaintiff's Exhibit 16 for identifi-
14 cation. Is this a letter you received from Mr. Finch?

15 A Yes, sure is.

16 Q I direct your attention to the third paragraph.
17 Do you know what Mr. Finch was referring to in that paragraph?

18 A Yes, I am quite sure. They were talking about
19 a date to get together to discuss more precisely the terms of
20 a merger.

21 Q Had Mr. Warnock told you that?

22 A He probably did. Certainly I knew it. Whether
23 Mr. Warnock told me that, I was certainly aware of it.

24 Q Let me direct your attention again to Plain-
25 tiff's Exhibit 9 for identification which was the hand-

1 written memo prepared by Mr. Warnock. I think we have agreed
2 it is dated January 6, 1967, and evidently reflects a con-
3 versation Mr. Warnock had with Mr. Finch. Did Mr. Warnock
4 show you the memo at that time?

5 A This memo?

6 Q Yes.

7 A Not that I recall.

8 Q Would you read the memo and tell me if you were
9 present during the discussion Mr. Warnock had with Mr. Finch
10 as reflected in this memo?

11 A No, I was not present.

12 Q When was the next time that Mr. Finch communi-
13 cated with Armstrong regarding the possibility of a merger?

14 MR. PENNOYER: After when?

15 BY MR. SCHURTMAN:

16 Q After the January meeting.

17 A Well, I am aware of communications, what form
18 I don't know, going back and forth, trying to establish a
19 date that Mr. Warnock refers to here and that finally took
20 place in the Barclay Hotel in Philadelphia, I believe, in
21 April, which would be following their market, as I recall.

22 Q Were you present at the meeting?

23 A No, I was not.

24 Q Do you know what happened at it?

25 A No, not really. I heard secondhand. I had a

1 report. I do not recall it in that much detail. I wasn't
2 there.

3 Q What was the information you received? ...

4 MR. PENNOYER: If you recall.

5 THE DEPONENT: The essence of what I recall was
6 that some of the conditions how a merger would operate were
7 further discussed. I believe there may have been some dis-
8 cussion at that time on what Mr. Finch's personal capacity
9 would be if there was a merger.

10 I am quite certain that there were no financial
11 details discussed of any consequence. I seem to recall that
12 they left with Mr. Finch saying that he would like to discuss
13 this with his board.

14 That is secondhand and that is just my memory.
15 I don't know how accurate that is.

16 BY MR. SCHURTMAN:

17 Q When was the next contact between Mr. Finch
18 and Armstrong regarding a merger possibility?

19 A First of all, I am going to say I don't know.
20 I can't tell you when the next one was. I don't know the
21 answer to that.

22 Q During the first part of 1967, between January
23 and June of 1967, did Mr. Donnelly discuss with you the fact
24 that Mr. Samuels had become involved in some way in the
25 Thomasville situation?

1 MR. PENNOYER: Note my objection to the premise
2 in the question and you may answer it.

3 MR. SCHURTMAN: I am not suggesting that the
4 premise is necessarily an established fact on this record. I
5 am simply asking him if that was discussed. If you want me to,
6 I will rephrase the question.

7 MR. PENNOYER: I have noted my objection.

8 MR. SCHURTMAN: I will rephrase the question
9 since your objection, I assume, is as to form.

10 MR. PENNOYER: It is.

11 BY MR. SCHURTMAN:

12 Q During the period January to June, 1967, did
13 Mr. Donnelly discuss Mr. Samuels with you? Let's take it in
14 several bites.

15 A I don't recall Mr. Donnelly discussing Mr.
16 Samuels with me, no.

17 Q Did anyone else discuss Mr. Samuels with you?

18 A Yes.

19 Q Who?

20 A Mr. Warnock.

21 Q What did Mr. Warnock say?

22 A Mr. Warnock received, as I recall, a telephone
23 call from Mr. Finch in which he, Mr. Finch, told Mr. Warnock
24 that Mr. Samuels had been in touch with him -- and I can't
25 remember the question or whatever it was that Mr. Finch raised

1 with Mr. Warnock -- but I remember Mr. Warnock telling me
2 about it and I know that he also told Mr. Donnelly.

3 Q What specifically did Mr. Warnock tell you?

4 A He was as angry as I and we were quite upset.

5 Q What were you angry about?

6 ✓ A Because Mr. Samuels, according to the way I under-
7 stood it, was to have absolutely nothing to do with this case at
8 all, Thomasville.

9 Q Had somebody told Mr. Samuels to have nothing
10 to do with the case?

11 ✓ A I can't vouch for this but I know in my conver-
12 sations with Mr. Binns and Mr. Warnock this was very clear.

13 Q Mr. Binns and Mr. Warnock told you that Mr.
14 Samuels should have nothing to do with it?

15 A I told them.

16 Q Mr. Samuels should have nothing to do with it?

17 A That is correct.

18 Q How did that come up?

19 A That came up on many occasions including the
20 first time Mr. Samuels, or the possibility of a Mr. Samuels
21 was first even contemplated. This was clearly something
22 aside. Thomasville was clearly something aside, in my mind,
23 from any interests that we had with Mr. Samuels.

24 Q Let me see if I understand you. Mr. Samuels
25 first came to Lancaster to meet with the Armstrong people on

1 August 10, 1966?

2 A I can't vouch for that date, I don't know. I
3 think there may have been a prior one. I am not sure of that.

4 Q Take my word for it, somewhat earlier than
5 today's session we did establish the August 10th date.

6 A He was here on August 10, all right.

7 Q Now, are you saying that at that time or
8 approximately around that time you had a conversation with
9 Mr. Warnock and/or Mr. Binns?

10 A Mr. Binns and I had several conversations on
11 the point, yes, sir.

12 Q In which you indicated that you did not want
13 Mr. Samuels to become involved in Thomasville?

14 A That is correct.

15 Q How did that subject come up? Why did you make
16 a point of saying that to Mr. Binns?

17 A Because we were discussing Mr. Samuels, the
18 general acquisition program we had in the company, which
19 included at that time carpet and many other possibilities
20 we were considering, and Thomasville was already a specific
21 case that I was pursuing.

22 Q Were there any other specific names of compan-
23 ies that you said should be excluded from Mr. Samuels?

24 A Not that I am aware of.

25 Q Can you fix the date of the conversation you

1 had with Mr. Warnock about the call that he received from Mr.
2 Finch regarding Mr. Samuels contacting him?

3 A Only the day of the call, whatever date that is,
4 and that may be a matter of record.

5 Q Well, can you remember the month in which it
6 took place?

7 ? A Well, they went out to the January market. It
8 had to be at that time. It had to be January.

9 Q Of 1967?

10 A Right.

11 Q Prior to your conversation with Mr. Warnock in
12 January of 1967, had you had any discussions with Mr. Binns
13 and Mr. Warnock about excluding Mr. Samuels from the
14 Thomasville --

15 A Not that I recall.

16 Q Perhaps my question isn't clear. I thought you
17 had testified that about August 10, 1966 --

18 A Right.

19 Q -- you had a conversation with Mr. Binns?

20 A Right.

21 Q In which you said that you wanted Mr. Samuels
22 excluded from Thomasville?

23 ? A Right.

24 Q I don't know if I asked you this. If I did,
25 I will repeat it. Did you list any other names that you

1 wanted excluded at that time?

2 A Not that I recall.

3 Q Only Thomasville?

4 A Right.

5 Q Now between August 10, 1966 and your January,
6 1967 conversation with Mr. Warnock, did you have any conver-
7 sations with either Mr. Warnock or Mr. Binns?

8 A Yes, as I mentioned earlier.

9 Q Obviously, I mean, conversations excluding
10 Mr. Samuels from Thomasville?

11 A Right.

12 Q How many conversations did you have?

13 A That I don't know.

14 Q Can you approximate? Two, three, ten, twenty?

15 A I don't know, two, three, I don't recall.

16 Q What was discussed during these conversations,
17 the substance of your discussion?

18 A The substance was that Mr. Samuels was to have
19 no part to play in the possibility of the Thomasville merger
20 or the negotiations thereof.

21 Q What brought about the fact that you had to
22 repeat this to Mr. Binns?

23 A I don't know.

24 Q You had told him once already. Why did you
25 repeat it to him on several other occasions?

1 A I don't know.

2 Q Did you do it because somebody had suggested that
3 Mr. Samuels was becoming involved?

4 A Not that I know of.

5 Q You simply cannot remember what prompted you to
6 bring up the subject again?

7 A No.

8 Q On several occasions?

9 A Several occasions -- you are putting words in
10 my mouth.

11 Q I am adopting your testimony. I wasn't there.

12 A I don't recall that precisely, no.

13 Q Do you have any other recollection concerning
14 such discussions?

15 A No.

16 Q And you say these discussions were with Mr.
17 Binns and Mr. Warnock?

18 A No, with Mr. Binns primarily.

19 Q He was the Senior Vice President at that time?

20 A Yes.

21 Q Did you communicate to Mr. Samuels that he was
22 not to become involved with Thomasville?

23 A I did not, no.

24 Q Do you know whether anyone else did?

25 A That I can't vouch for. Mr. Samuels was not my

1 responsibility. I did not deal --

2 Q Did you ever ask Mr. Binns if he had told Mr.
3 Samuels?

4 MR. PENNOYER: At any time?

5 BY MR. SCHURTMAN:

6 Q At any time.

7 A I seem to recall -- this is my memory and my
8 memory plays tricks -- but I seem to recall at the time we
9 were first discussing the possibility of employing Mr.
10 Samuels, talking with Mr. Binns about Thomasville very
11 specifically as not applying to any arrangement, and I seem to
12 recall afterwards -- which is one of the occasions that I am
13 referring to -- discussing this with Mr. Binns as to whether
14 or not he clarified this point with Mr. Samuels and that he
15 said he did.

16 Q Do you remember when he said that?

17 A No, I can't remember that.

18 Q Was there anything in writing on this subject?

19 A I am not aware of it.

20 Q Now getting back to your January, 1967 conver-
21 sation with Mr. Warnock, I had asked you what was said during
22 this discussion and you told me that both you and Mr. Warnock
23 were very angry. Aside from the fact that you both were
24 very angry, what else was said?

25 A I don't remember. I seem to recall it was a

1 phone conversation and that is about all.

2 Q Did you discuss what should be done to correct
3 the situation?

4 A I didn't. I don't remember.

5 Q Why did Mr. Warnock call you? What did he want
6 from you?

7 MR. PENNOYER: Objection.

8 MR. SCHURTMAN: I will rephrase the question.

9 BY MR. SCHURTMAN:

10 Q What did Mr. Warnock want you to do?

11 A Nothing that I know of.

12 Q Did he indicate why he called you?

13 A Just simply to advise me, keep me informed.

14 Q At which point you said in words or substance,
15 I thought that Samuels was to be kept out of this situation.

16 A I don't remember my response to be exact, no,
17 but --

18 Q How did you articulate your anger?

19 A That would be the way in which I would respond,
20 yes.

21 Q What else did you say?

22 A I don't recall saying anything else.

23 Q Did you go on to tell him something ought to be
24 done about it?

25 A Not that I remember.

1 Q Did Mr. Warnock say anything to you that some-
2 thing ought to be done about it?

3 A I happen to know that he talked to Mr. Donnelly
4 and told Mr. Donnelly to do something about it.

5 Q What did he tell Mr. Donnelly to do?

6 A I don't remember that precisely.

7 Q Did Mr. Donnelly tell you that Mr. Warnock had
8 spoken to him?

9 A That I don't recall. He may have.

10 Q Do you remember the substance of what Mr.
11 Warnock said to Mr. Donnelly?

12 A Yes, the substance of it, as I recall, was to
13 get Harry Samuels off of Tom Finch's back.

14 Q Do you know if Mr. Donnelly did anything about
15 it?

16 A I don't know it for a fact. I have reason to
17 be sure he would properly respond but I don't know it for a
18 fact.

19 Q On what do you base your statement that you
20 are reasonably sure he did something?

21 A Well, I just happen to know Fred Donnelly, and
22 when the President of the Company tells him to do something,
23 he does it.

24 Q But you have no information as to what if any-
25 thing he did?

1 A I was not there.

2 Q After that January, 1967 discussion with Mr.
3 Warnock, did the subject of Mr. Samuels and Thomasville come
4 up again?

5 A Not that I recall.

6 Q Did it ever come up again?

7 A Well, it did when Mr. Samuels wrote us a reg-
8 istered letter but not between then.

9 Q You are referring to the letter in which he
10 requested a fee or commission?

11 A Correct.

12 Q When did you first learn about that letter?

13 A I got a copy of that registered letter.

14 Q What did you do when you received it?

15 A Well, I don't recall. I guess I probably ex-
16 pressed some shock and dismay to someone.

17 Q To whom?

18 A I would believe it would be to Mr. Binns, but
19 I don't recall that specifically.

20 Q Did you discuss that letter with anyone?

21 A Yes, with Mr. Binns, sure.

22 Q Did you discuss it with Mr. Donnelly?

23 A I surely did at some time. I don't remember,
24 on that initial occasion, whether Fred was there or not.

25 Q How about with Mr. Warnock?

1 A I am sure I did with him. But I think, if I
2 recall correctly, my initial conversation was with Mr. Binns.

3 Q What did you say and what did Mr. Binns say?

4 A He has absolutely no grounds for his claim.

5 Q Did you ask Mr. Binns if someone had told Mr.
6 Samuels to lay off Thomasville?

7 A I don't recall whether I did at that time. I
8 just don't remember that.

9 Q Did Mr. Binns explain why he thought that
10 Samuels had no grounds for his claim?

11 A The same reasons I have stated.

12 Q Which were what?

13 A That it was clearly outside the scope of his
14 interest.

15 Q Did you and Mr. Binns discuss whether Mr.
16 Samuels had in fact been in touch with Mr. Finch after you
17 received that claim letter from Mr. Samuels?

18 A Had he been in touch with --

19 Q Yes.

20 A I don't recall discussing it with Mr. Binns at
21 that time. Obviously he knew it from a phone conversation.

22 Q What else did you and Mr. Binns say at that
23 meeting or during that conversation?

24 A I don't remember.

25 Q Did Mr. Binns ask you to prepare a memorandum

1 concerning Mr. Samuels' activities?

2 A No.

3 Q Did you prepare such a memorandum at any time?

4 A I don't remember preparing a memorandum.

5 Q Did you prepare a memorandum for the attorneys
6 of Armstrong?

7 A I don't remember preparing one.

8 Q Did Mr. Donnelly ever tell you that Mr. Samuels
9 had called Mr. Donnelly about a conversation that Mr. Samuels
10 had with Mr. Finch?

11 A I don't remember that.

12 Q Did you and Mr. Donnelly discuss Mr. Samuels'
13 possible involvement in the Thomasville situation?

14 MR. PENNOYER: At any time?

15 BY MR. SCHURTMAN:

16 Q At any time.

17 A Well, we might have. I don't recall it but we
18 might well have. I don't remember that.

19 Q You have no specific recollection?

20 A No, I don't have a specific recollection.

21 Q Now, I think we have gotten up to the meeting
22 that took place in Philadelphia sometime in 1967 between Mr.
23 Finch and certain Armstrong executives. Do you know what
24 happened after that in connection with the merger?

25 A There was one instance when Mr. Finch invited

1 Mr. Binns and me and our wives to spend a weekend at his place
2 in Sea Island, Georgia. I think that may have been after that
3 meeting although I can't recall.

4 And I am quite certain there were some telephone
5 conversations, there may have been even some letters, going
6 back and forth between probably Mr. Warnock and Mr. Finch,
7 and I was not directly involved because at that point I felt
8 that I had brought the managements together. It was now up
9 to them to set their dates and considerations for final
10 negotiations.

11 So I deliberately refrained from making any
12 contacts or muddying the waters. So I am not aware of any-
13 thing that went back and forth until -- now there may have --
14 I should say I don't know -- there may have been another visit
15 by a Mr. Thrower and a Mr. Wilson to Lancaster that intervened
16 there. I can't remember that date, either. That may have
17 been in there.

18 The thing I am trying to get at is they met with
19 their board in November of that year and their board decided
20 they did not wish to pursue the subject any further and they
21 dropped it.

22 Q Would you identify Mr. Thrower and Mr. Wilson
23 for the record?

24 A Ed Thrower, Edwin K. Thrower was Vice President
25 of Thomasville Furniture Industries and he ran the Founders

1 Division. Henry Wilson is a young man that Mr. Finch employed
2 because of his knowledge of the furniture industry which went
3 back to his childhood, since his father was noted for furniture
4 manufacture, and he employed Mr. Wilson in a variety of
5 capacities. The specific one in which he was employed, I
6 don't know. It could have been any one of a number. He had
7 a variety of jobs at Thomasville.

8 Q Do you remember visiting Thomasville in August
9 of 1967?

10 A This is where I get a little mixed up. That may
11 have preceded the visit that Thrower and Wilson made here.
12 There was one. I can't remember these dates accurately.

13 Yes, I was down there at some time, likely.
14 I don't remember.

15 MR. SCHURTMAN: Could you produce a letter from
16 Mr. Finch to Mr. Banzhaf dated September 22, 1967, which I
17 will ask the Reporter to mark as Plaintiff's Exhibit 17 for
18 identification.

19 MR. PENNOYER: I produce the original of that
20 letter.

21 (Plaintiff-Banzhaf Exhibit No. 17,
22 Letter dated September 22, 1967,
23 to Mr. Banzhaf from Mr. Finch was
produced and marked for identifi-
cation.)

24 BY MR. SCHURTMAN:

25 Q Mr. Banzhaf, did you receive Plaintiff's Exhibit

1 17 from Mr. Finch?

2 A Oh, yes.

3 Q Do you know why he sent you that information?

4 A Just as a matter of interest.

5 Q Had you discussed Drexel and Stanley with him?

6 A Companies, yes, I guess, news about the furniture
7 industry.

8 Q Had Armstrong been considering acquisition with
9 either Drexel or Stanley?

10 A At one time we had the Drexel people here to
11 visit us. Of course, very early I had visited them. So at
12 one time there was some interest, yes. Or, put it this way,
13 it was a subject for consideration.

14 Q Had you told Mr. Finch about that?

15 A I am sure we did at some time, yes, sure.

16 Q You can't recall any reasons other than the ones
17 you stated as to why Mr. Finch sent you this letter?

18 A No.

19 Q All right, you say that in November, 1967 the
20 Board of Thomasville decided not to go ahead with the Arm-
21 strong merger. When did the merger negotiations revive?

22 A It would be, I think, in February.

23 Q Of '68?

24 A Sixty-eight.

25 Q How did that come about?

1 A I went down to Wachovia for the purpose of
2 deciding who should we look at next since the Thomasville --

3 MR. SCHURTMAN: May we go off the record for one
4 second?

5 - - -

6 (Discussion off the record)

7 - - -

8 BY MR. SCHURTMAN:

9 Q You had started to say that you went down to
10 Wachovia?

11 A Right.

12 Q In February of 1968?

13 A Yes, sir.

14 Q To discuss other possible acquisitions?

15 A Right, other possibilities.

16 Q And what happened?

17 A And I met with John Watlington and I was express-
18 ing my great sorrow to him that Thomasville had broken off,
19 because this was really the only company in the furniture
20 industry in which I was interested. It was the ideal fit.
21 And I just didn't really know where to go from here. I
22 solicited his counsel and his advice.

23 He said to me, after hesitating for a minute,
24 I think I can recall this almost exactly, he said: I had to
25 ask my wife four times before she said yes and agreed to marry

1 me. What makes you think you should stop with only approach-
2 ing Thomasville once?

3 I said: All right, I will go back. And in his
4 office I called Mr. Finch and made a luncheon appointment that
5 same day. What do you want?

6 Q What happened at that time?

7 A Is that what you want to know?

8 Q That is what I am here for.

9 A So I went over to Thomasville. Mr. Finch and
10 I drove out to the Willow Creek Country Club and I reminded
11 him of something that he had told me earlier, when he broke
12 off our negotiations, he said: If you ever want my help, I
13 will be very glad to give it. I said: All right, I want
14 your help and I want you to sit down with me, and aside from
15 Thomasville, you list the furniture companies in the general
16 North Carolina area ranked in order that you think we should
17 be interested in, and I had a list of them.

18 He, with me at luncheon, listed one, two, three,
19 four, the way he thought ought to be our interest.

20 After doing that I told him, I said: There is
21 one thing I want to tell you. You have done exactly what you
22 said you would when I asked you. But you ought to know as
23 far as I personally am concerned you broke my heart by turn-
24 ing us down.

25 He said: I have agonized over that decision

1 many, many times ever since and I now question whether or not
2 it was the right one. Will you do me a favor?

3 I said: Yes. And he said: You talk to these
4 fellows, these other manufacturers in the sequence that he and
5 I established, but don't you make any arrangements with them
6 until you talk to me first. I said: Fair enough.

7 I visited each of these several manufacturers
8 and returned to Thomasville and met with him. I think I was
9 there two days, I can't remember now, it doesn't make any
10 difference, but at that time we agreed that we ought to resume
11 our conversations. That is what happened on that visit.

12 Q When did you finally reach an agreement in
13 principle to have a merger?

14 A On the 30th day of June -- it was either the
15 30th day of June or the 1st day of July, I can't remember
16 which now -- about 11 o'clock in the evening at Sea Island,
17 Georgia.

18 MR. PENNOYER: Nineteen --

19 THE DEPONENT: Sixty.

20 BY MR. SCHURTMAN:

21 Q Eight?

22 A Eight.

23 Q Did you make more than one trip to Sea Island,
24 Georgia?

25 A Two.

1 Q There were two trips?

2 A Yes. One was, I guess, a social affair. We
3 really didn't talk very much business.

4 Q When was that?

5 A That was one I referred to earlier and I can't
6 quite tell you exactly when that was. I just don't recall.
7 My recollection says that it was in the spring of 1967, Mr.
8 Binns and me and our wives, but I don't remember that exactly.
9 I am not that sure.

10 Q And that ultimately led to the merger between
11 Thomasville and --

12 A Well, that was sort of a social get-together.
13 The real occasion you are referring to, where we came to the
14 agreement in principle, was in 1968.

15 Q During the 1968 discussions with Mr. Finch,
16 did Mr. Samuels' name come up?

17 A You are talking about where, at what time, the
18 '68 discussions?

19 Q Prior to the merger.

20 A The only instance of Mr. Samuels' name coming
21 up was his phone call to Mr. Warnock that I recall.

22 Q That was in 1967?

23 A That is right, '67. '68, no.

24 Q When you say his phone call, you mean Finch's
25 phone call?

1 A That is right, '67. '68, no.

2 Q Did you ever have occasion to discuss Finch's
3 phone call to Warnock with Finch?

4 A I don't remember it.

5 Q Or did you discuss with Mr. Finch the fact that
6 Mr. Samuels had apparently spoken to him in Chicago?

7 MR. PENNOYER: Objection.

8 THE DEPONENT: He may possibly have talked
9 to me about it. I just can't remember the occasion.

10 BY MR. SCHURTMAN:

11 Q You say Mr. Finch may also have discussed it
12 with you?

13 A May have, sure.

14 Q But you have no specific recollection?

15 A No.

16 Q Now after Mr. Samuels sent his claim letter,
17 I believe you told me you had discussed the claim letter with
18 Mr. Finch.

19 A Right.

20 Q Did you discuss it with anyone else?

21 A I don't remember.

22 Q Prior to testifying today did you discuss the
23 nature of the questions you might be asked with anyone?

24 A Only general procedure of the testimony.

25 Q With whom did you discuss that?

1 A With Mr. Pennoyer and Mr. Trigg.

2 Q Did you have a meeting with Mr. Donnelly and/or
3 Mr. Finch to discuss the areas in which you might be question-
4 ed?

5 A No, I did not.

6 Q Or to refresh your recollection as to the se-
7 quence of events?

8 A I did not discuss that with Mr. Donnelly or Mr.
9 Finch. No, I did not.

10 Q Did you see a memorandum that had been prepared
11 by Mr. Finch for Armstrong's attorneys outlining his recollec-
12 tion of the sequence of events?

13 A I don't remember that.

14 MR. SCHURTMAN: I wonder if you would show the
15 witness the memorandum as to which you claim privilege,
16 simply so he can tell whether he saw it or not. I believe
17 that is Plaintiff's Exhibit 4 for identification.

18 THE DEPONENT: I don't remember it. I may have
19 seen it. I don't recall.

20 BY MR. SCHURTMAN:

21 Q Now Mr. Banzhaf, did you have any connection
22 with Mr. Samuels in the Babbitt matter?

23 A No.

24 Q You were completely out of the Babbitt matter?

25 A Correct.

1 Q Do you know anything about it at all?

2 MR. PENNOYER: Objection.

3 MR. SCHURTMAN: I am trying to determine
4 whether I should take the time to question you about it.

5 THE DEPONENT: I should answer the question?

6 MR. PENNOYER: No, let's wait for a minute.

7 BY MR. SCHURTMAN:

8 Q On what terms did Armstrong acquire the Bab-O
9 business, if you know?

10 MR. PENNOYER: If you know.

11 THE DEPONENT: I don't know.

12 BY MR. SCHURTMAN:

13 Q Do you know how much Armstrong paid for it?

14 A No.

15 Q Do you know how much of a commission Mr.
16 Samuels was paid?

17 A No.

18 Q Did Mr. Donnelly ever discuss Mr. Samuel's
19 claim for commission with you?

20 A In the Bab-O case?

21 Q Yes.

22 A He may have. I am not aware of it.

23 Q You have no specific recollection?

24 A No.

25 Q Do you know whether Mr. Donnelly and Mr. Samuels

1 had a dispute about the size of the fee on the Bab-O matter?

2 A Not really, no, I don't.

3 Q Do you know whether Mr. Samuels was involved
4 in the Bab-O negotiations?

5 A I don't know anything about the Bab-O thing at
6 all.

7 MR. SCHURTMAN: Off the record.

8 - - -

9 (Discussion off the record)

10 - - -

11 BY MR. SCHURTMAN:

12 Q Do you know whether Mr. Warnock met Mr. Finch
13 prior to January of 1967?

14 A Prior to January, 1967 --

15 Q January of '67 was when Finch and his group
16 came to Lancaster.

17 A I am almost certain the answer to that would be
18 no. I don't believe he did. I am quite certain I introduced
19 them.

20 Q Do you know whether he had any telephone con-
21 versations with Mr. Finch?

22 A I don't believe so.

23 MR. SCHURTMAN: Mr. Pennoyer, I think we dis-
24 cussed that point before. Some of the memos from Mr. Warnock's
25 file are dated 1966. I believe we have previously agreed

1 that the one that was dated 1-6-66 should have been 1-6-67.

2 I wonder if I could ask you to look over the
3 other memos. There is one that is dated 7-7-66. Perhaps the
4 witness can tell me from the context if that should be '67.

5 Then there is another one dated 5-9-66.

6 MR. PENNOYER: I have no objection to your ask-
7 ing the witness. On the other hand, it is not his memorandum.
8 I think unless he knows that the date is wrong, I wouldn't
9 want him to guess.

10 THE DEPONENT: I am just almost certain that
11 cannot be '66. It has got to be '67. Wait.

12 BY MR. SCHURTMAN:

13 Q Mr. Banzhaf, to fix the dates in your mind,
14 October of '66 was when you went to Thomasville and met with
15 Mr. Finch. January of '67 was when Mr. Finch came to
16 Lancaster.

17 MR. PENNOYER: Just a minute. I object to the
18 question. The point is, I think, that October, '66 is indi-
19 cated by the witness as being the date of his visit to
20 Wachovia and I believe he testified about an earlier visit to
21 Thomasville.

22 MR. SCHURTMAN: That is correct.

23 MR. PENNOYER: In January of '66.

24 MR. SCHURTMAN: You are right.

25 MR. PENNOYER: So what is the question now?

1 MR. SCHURTMAN: Really the question is whether
2 this witness has any information --

3 THE DEPONENT: I don't think this could
4 possibly be. I think that has got to be '67.

5 BY MR. SCHURTMAN:

6 Q I also show you a memo that is dated 5-9-66 in
7 Mr. Warnock's handwriting. This is Mr. Warnock's handwriting,
8 is it not?

9 A Yes, it is.

10 Q Would you look it over?

11 MR. PENNOYER: Now the question is: Does the
12 witness believe that that date should be '67 rather than '66?

13 MR. SCHURTMAN: Does the witness have any infor-
14 mation from the context of this memo which would lead him to
15 conclude that it should be '67 rather than '66?

16 THE DEPONENT: Yes, I think that should be '67
17 and not '66.

18 MR. SCHURTMAN: I have no further questions at
19 this time, Mr. Banzhaf.

20 MR. PENNOYER: I have no questions.

21 - - -

22 (The taking of the depositions was recessed at
23 12:20 p.m.)

24 - - -

25

1 I hereby acknowledge that I have read the fore-
2 going transcript, and the same is a true and correct record
3 of the deposition given by me.

4
5 _____
6 Date

_____ Deponent

C E R T I F I C A T E

STATE OF PENNSYLVANIA :
: to wit:
COUNTY OF LANCASTER :

I, James P. O'Hara, a Notary Public duly
commissioned and qualified in and for the County of Lancaster,
State of Pennsylvania, do hereby certify that, pursuant to
Notice, there came before me on the 23rd day of November,
1971, beginning at 9:00 o'clock a.m., in Conference Room 211,
Building Products Division, Armstrong Cork Company, Liberty
and Charlotte Streets, Lancaster, Pennsylvania, the following
named person to wit: Max Banzhaf, who was by me duly sworn
to testify to the truth and nothing but the truth of his
knowledge touching and concerning the matters in controversy
in this cause; that he was thereupon carefully examined upon
his oath and the examination reduced to writing under my
supervision; that the deposition is a true record of the
testimony given by the witness.


I further certify that I am neither attorney or
counsel for, nor related to or employed by, any of the
parties to the action in which this deposition is taken, and
further that I am not a relative or employee of any attorney
or counsel employed by the parties hereto or financially
interested in the action.

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In witness whereof I have hereunto set my hand
and affixed my notarial seal this 21 day of December, 1971.

My commission expires:


May 5, 1975.



Notary Public

NOTARY PUBLIC
My Commission Expires May 5, 1975
Lebanon, Pa. Lebanon County

I hereby certify that the proceedings and
evidence are contained fully and accurately in the notes
taken by me on the deposition of the within cause and that
this is a correct transcript of the same.



Official Reporter

Reported by:

James P. O'Hara
Mohrbach & Marshal, Inc.
2000 State Street
Harrisburg, Pa.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY S. SAMUELS, :
Plaintiff :
- against - : 69 CIVIL ACTION 3022
ARMSTRONG CORK COMPANY, :
Defendant :

D E P O S I T I O N

Deposition of witness produced, sworn and
examined before the undersigned Notary Public on Tuesday,
November 23, 1971, beginning at 1:30 o'clock p.m., in Confer-
ence Room 211, Building Products Division, Armstrong Cork
Company, Liberty and Charlotte Streets, Lancaster, Pennsyl-
vania, under and by virtue of Notice to take Depositions pur-
suant to Rule 26 et seq. of Federal Rules of Civil Procedure,
on behalf of Harry S. Samuels, Plaintiff, in a certain case
pending in the United States District Court, Southern District
of New York, to the above caption and number.

APPEARANCES:

SHEA GOULD CLIMENKO & KRAMER
330 Madison Avenue, New York, N. Y. 10017
By
WILLIAM SCHURTMAN, ESQ.
For: Plaintiff

R. S. TRIGG, ESQ.
Legal Department, Armstrong Cork Company,
Lancaster, Pa.
For: Defendant

CHADBOURNE, PARKE, WHITESIDE & WOLFF
25 Broadway, New York, N. Y. 10004
By
PAUL PENNOYER, JR., ESQ.
BRUCE KEIHNER, ESQ.
For: Defendant

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S T I P U L A T I O N

It is stipulated that filing of the deposition is waived and the witness may sign deposition before any Notary Public.

- - -

MR. PENNOYER: Before we start, in view of your request yesterday for documents from Mr. Finch's file, I again reviewed the Finch file and I have here some documents which I believe, with the exception of two, you already have been given, but I am giving them to you now because they represent Mr. Finch's copies of letters, for instance, sent by Armstrong to him or from Armstrong to him.

In addition to that, there are, I believe, two documents which you may not have. One is a letter of August 22, 1967, Finch to Watlington, and the other is a letter of August 11, 1967, Finch to a Mr. Clifton P. Walker of Hornblower & Weeks.

So I will hand you those now. As I say, I believe you have all the rest of them from other files.

MR. SCHURTMAN: Thank you.

MR. PENNOYER: In addition to the foregoing, I am now handing you a Xerox of the reverse side of the letter of October 10th which you requested this morning.

MR. SCHURTMAN: Thank you.

- - -

1 FREDERICK STOCKHAM DONNELLY, JR., a deponent
2 of lawful age, having been duly sworn, doth depose and say as
3 follows:

4 BY MR. SCHURTMAN:

5 Q Mr. Donnelly, would you state your full name
6 and home address for the record?

7 A Frederick Stockham Donnelly, Jr., 202 North
8 President Avenue, Lancaster, Pennsylvania.

9 Q What is your present position with defendant
10 Armstrong?

11 A I am Vice President and General Manager of
12 International Operations.

13 Q How long have you held that position?

14 A Since January of '68.

15 Q Prior to that time what position did you hold
16 at Armstrong?

17 A I was Treasurer.

18 Q Were you Treasurer in 1965, 1966, and 1967?

19 A '66 and '67.

20 Q What position, if any, did you hold in 1965?

21 A 1965 I was the General Sales Manager of the
22 Industry Products Division.

23 Q What were your duties as Treasurer of Armstrong?

24 A I was chief financial officer of the company.

25 Q And in that capacity would you be involved in

1 possible acquisitions and mergers?

2 A I was a member of the Acquisition Committee.

3 Q When was the first time that you heard of the
4 plaintiff, Harry Samuels?

5 A It was during one of my visits to New York which
6 might have been in June of '66, somewhere around there. I
7 don't remember the exact date. Or early July, something like
8 that.

9 Q From whom did you hear about him?

10 A From one of our contacts, First National City
11 Bank, was the first time I heard of him. I think his name is
12 Schmidt. I am not certain.

13 Q How did the name of Mr. Samuels come up in your
14 conversation?

15 A To the best of my recollection I think it likely
16 came up in this context. We were discussing our acquisition
17 interests with First National City Bank, and I believe they
18 asked us if we had ever worked with anybody like Mr. Samuels
19 and mentioned his name.

20 Q Did you express interest in learning more about
21 Mr. Samuels?

22 A Yes.

23 Q Had you told the people at First National City
24 Bank that you were looking for an acquisition in the furniture
25 field?

1 A I think it is reasonable -- I don't recall
2 exactly -- but it would have been unlikely that we hadn't.

3 Q Did they tell you that Mr. Samuels had some
4 particular expertise in the furniture field?

5 A I think they mentioned he had done some work in
6 the furniture field among others, they were also interested,
7 as I am sure you know, in the carpet business, and at that
8 time in looking at other acquisitions outside of those two
9 media fields.

10 Q Did they tell you what experience Mr. Samuels
11 had had in the furniture field?

12 A No, they didn't. Or if they did, I don't recall.

13 MR. SCHURTMAN: Mr. Pennoyer, would you produce
14 a letter dated July 20, 1966 from H. Eric Schmidt, Vice
15 President of First National City Bank, to Mr. Donnelly, which
16 I will ask the Reporter to mark as Plaintiff's Exhibit 18?

17 MR. PENNOYER: I am handing you the original
18 of that letter referred to.

19 (Pleading-Donnelly Exhibit No. 18,
20 Letter dated July 20, 1966 to Mr.
21 Donnelly from H. Eric Schmidt was
produced and marked for identifica-
tion.)

22 BY MR. SCHURTMAN:

23 Q Mr. Donnelly, I show you Plaintiff's Exhibit
24 18 for identification. Do you recall receiving this letter
25 from Mr. Schmidt?

1 A Not specifically, no. I don't remember this
2 particular letter.

3 Q Did you receive this letter from Mr. Schmidt?

4 A I would assume I did, yes.

5 Q I am directing your attention to the second
6 paragraph in the letter. Would you say this is a follow-up
7 to the conversation you had with the people at First National
8 City Bank?

9 A Yes, I would.

10 Q I notice certain pencil notations on that
11 letter. Can you identify the handwriting?

12 A That looks like mine, yes.

13 MR. SCHURTMAN: Incidentally, Mr. Pennoyer,
14 this Xerox copy that I received from you does not clearly re-
15 produce the pencil notations. Perhaps I could read them into
16 the record at this point or perhaps we could get a clearer
17 copy.

18 MR. PENNOYER: The exhibit will be available
19 at the trial. You do what you want.

20 MR. SCHURTMAN: Why don't I ask the witness to
21 do it?

22 BY MR. SCHURTMAN:

23 Q Would you be good enough to read your pencil
24 notations into the record? These are the pencil notations on
25 Plaintiff's Exhibit 18.

1 A Customer of bank four to five years, sixty. I
2 am not sure what that next one -- I am not sure what that
3 means but there is an E, period, an EV, and then REF, Col,
4 Law School, reputable, reliable, intermed -- that is the way
5 it is spelled here, I-N-T-E-R-M-E-D, and principal, largest
6 Mohasco stockholder, knows Furna, and then there is a check
7 mark followed by his capacity.

8 Q Do you know when you made these notations?

9 A I could only surmise but I don't know when. I
10 don't remember specifically.

11 Q When do you think you made them?

12 A It is dated July 20. Well, obviously sometime
13 after the letter was received. But I can't recall exactly
14 when. It might have been during a phone conversation with
15 Schmidt following receipt of the letter. I don't recall.

16 MR. SCHURTMAN: Mr. Pennoyer, would you produce
17 a memorandum dated July 27, 1966 signed by Mr. Donnelly which
18 I will ask the Reporter to mark as Plaintiff's Exhibit 19 for
19 identification?

20 MR. PENNOYER: I hand you that memorandum.

21 (Pleading-Donnelly Exhibit No. 19;
22 Memorandum dated July 27, 1966, from
23 Mr. Donnelly, was produced and marked
24 for identification.)

24 BY MR. SCHURTMAN:

25 Q Mr. Donnelly, I show you Plaintiff's Exhibit 19.

1 Did you prepare that memorandum?

2 A Yes, I believe I did.

3 Q In the third paragraph, second line, you refer
4 to having reviewed the matter with Jim Binns. What did you
5 discuss with Mr. Binns and when?

6 A Well, let's see, this memorandum was written on
7 July 27. Sometime prior to that I talked to Mr. Binns about
8 the discussions that I had with Mr. Schmidt, and basically
9 the information that is contained in the note.

10 Q Did you discuss with Mr. Binns the need for
11 getting a business broker of Mr. Samuels' type to work with
12 you in the furniture industry?

13 A I was a party to that discussion, yes.

14 Q What was said?

15 A I think our feeling basically with regard to
16 Mr. Samuels was that this type of business broker was someone
17 with whom our company had never worked before and I believe
18 our feeling was that in view of our very active acquisition
19 interest at that period of time, over a rather wide range
20 of types of businesses, this was an avenue that we ought to
21 at least explore.

22 Q Did you also discuss Mr. Samuels with Mr.
23 Banzhaf at that time?

24 A I don't remember specifically but I think it
25 likely that I did.

1 Q Did Mr. Banzhaf indicate to you during that
2 discussion that he was actively pursuing the possibility of
3 acquiring Thomasville Furniture Company and that he would not
4 want Mr. Samuels involved in that?

5 A Again I don't recall specifically. I think it
6 is possible that he may have. I knew, of course, that we
7 had been interested in Thomasville for some time.

8 Q But you have no specific recollection of Mr.
9 Banzhaf telling you at that time that he wanted Samuels to
10 stay out of Thomasville?

11 A This was a position that we were all in general
12 agreement on, but whether it was mentioned at that particular
13 time, I am not certain. At this point we were just consider-
14 ing whether we would work with Mr. Samuels or even talk to
15 him about it.

16 It is possible, but I can't honestly say at
17 this point we reviewed anything that specific as far as Mr.
18 Samuels is concerned.

19 Q Did you contact Mr. Samuels?

20 A Yes.

21 Q When did you contact him?

22 A I don't recall specifically.

23 Q Do you remember how you communicated with him?

24 A No, I don't recall whether Mr. Schmidt handled
25 it or whether I did, which way the appointment was set up.

1 Q In any event, did Mr. Samuels meet with you?

2 A With us?

3 Q Yes.

4 A Yes.

5 Q When did that first meeting take place?

6 A As I recall, that was on August the 10th.

7 Q And that took place in Lancaster?

8 A Yes.

9 Q How long was Mr. Samuels here?

10 A As I recall, he probably got here in the
11 middle of the morning and left in the middle of the afternoon.

12 Q Did you meet with him?

13 A Yes.

14 Q Were you with him throughout the entire day?

15 A I am not certain whether I was with him the
16 whole time. I was with him most of the time he was here.

17 Q Did someone show Mr. Samuels around the facil-
18 ities of Armstrong?

19 A The only specific area outside of my office
20 that I can recall having taken Mr. Samuels was into Mr.
21 Painter's office, in the President's office.

22 Q Who was Mr. Painter?

23 A He was the Executive Vice President.

24 Q And the President at that time was Mr. Warnock?

25 A That is right.

1 Q Do you know whether Mr. Samuels also met Mr.
2 Binns?

3 A I believe he did.

4 Q And did he meet Mr. Banzhaf?

5 A I believe he did.

6 Q Did he meet anyone else?

7 A He may have met Mr. Ellis on that trip, I am
8 not certain. He was down here again, and I am not clear as
9 to exactly which ones he met on which trip.

10 Q Did you have lunch with Mr. Samuels?

11 A We are talking about the August 10th?

12 Q Yes.

13 A Yes, I think a group of us had lunch out at
14 the Country Club.

15 Q What did you discuss with Mr. Samuels at these
16 various meetings?

17 A Well, I would answer that question two ways.
18 The objective of the meeting, as far as we were concerned,
19 was to make some determination as to whether Mr. Samuels
20 might be helpful to us, so I would say first that I think he
21 did most of the talking, as you might expect, in reviewing
22 his contacts and business and the way he operated.

23 At the same time I think we made some effort
24 to explain to him what our general acquisition objectives
25 were. In that context I think we talked generally, for the

1 most part, at least as far as we were concerned, generally
2 about the carpet industry, the furniture industry.

3 As I remember, he mentioned some other companies
4 he was familiar with that were in other industries.

5 Q Did he mention any companies in the furniture
6 industry?

7 A I think it is likely that he did but I don't
8 remember specifically at that point his mentioning any par-
9 ticular companies.

10 Q Do you remember his mentioning Kroehler Furni-
11 ture Company?

12 A Not specifically, not at that time.

13 Q Or Johnson-Carper?

14 A Not at that time.

15 Q How about Thomasville?

16 A I don't remember his mentioning Thomasville.

17 Q Was Thomasville mentioned at all by anyone
18 during these discussions on August 10th?

19 A I think it likely that it was, since our interest
20 in the furniture business was discussed and Thomasville had
21 always been the company that we felt would make the best fit
22 with Armstrong.

23 Q Did you tell that to Mr. Samuels?

24 A I would think it likely that we did.

25 Q When you say you would think it likely, does

1 that mean that you are speculating now that you may have done
2 it or do you have a specific recollection that you did do it?

3 A I don't have a specific recollection. I think
4 in the context of what was said, it is probable that the
5 name Thomasville was mentioned, probably by us. I have no
6 recollection of Mr. Samuels mentioning it.

7 Q You testified earlier that it was your under-
8 standing or knowledge -- I can't remember your exact words --
9 that Armstrong wanted to keep Mr. Samuels out of the Thomas-
10 ville situation.

11 A Did I say that?

12 MR. PENNOYER: I think you are thinking about
13 this morning.

14 MR. SCHURTMAN: I will let the record speak for
15 itself, but let me ask the question again, then.

16 BY MR. SCHURTMAN:

17 ✓ Q Did either Mr. Binns or Mr. Banzhaf indicate to
18 you, prior to August 10th, that if you were going to use Mr.
19 Samuels as a broker or finder in the furniture industry, you
20 would not want him involved with Thomasville?

21 A This is prior to August 10th?

22 ✓ Q Yes.

23 A I have no specific recollection of us being
24 that detailed in how we wanted to work with Mr. Samuels at
25 that point. I think it is possible but I don't recall it.

1 Q I take it at this time you do not have any
2 specific recollection that Mr. Samuels mentioned Thomasville
3 to you on August 10 or that you mentioned Thomasville to Mr.
4 Samuels on August 10th?

5 A I think it is probable that we mentioned Thomas-
6 ville. I have no recollection of his mentioning Thomasville.

7 Q Do you have any recollection as to what you told
8 him about Thomasville on August 10th?

9 A I don't have any specific recollection. I can
10 speculate.

11 Q What is your speculation?

12 MR. PENNOYER: I think I would instruct the
13 witness not to answer. I don't think that is a proper
14 question.

15 BY MR. SCHURTMAN:

16 Q Did the name of Tom Finch come up during your
17 discussion with Mr. Samuels?

18 MR. PENNOYER: On August 10th?

19 MR. SCHURTMAN: Yes.

20 THE DEPONENT: Not that I can recall.

21 BY MR. SCHURTMAN:

22 Q You do not recall Mr. Samuels mentioning that
23 he knew Tom Finch?

24 A No, I don't.

25 Q Did you know Mr. Finch at that time?

1 A No.

2 Q Were you aware at the time that Mr. Banzhaf
3 had met Mr. Finch in January, 1966?

4 A Yes, I was. I was aware that he met him. I am
5 not certain when it was he met him.

6 Q Did you know that Mr. Milton Ford and Mr.
7 Hazeltine had also met Mr. Finch?

8 A I am not certain I knew exactly who was in that
9 party.

10 Q Do you know whether either Mr. Warnock or Mr.
11 Binns had met Mr. Finch prior to August 10, 1966?

12 A No.

13 Q They had not?

14 A I do not know. I would just point out for the
15 record again that prior to January of 1966 I was in another
16 area of the company and had very little contact with this
17 acquisition matter.

18 Q As of August 10, 1966 did Armstrong know or
19 have any information which led it to believe that Thomasville
20 would be available for merger or acquisition?

21 A I am not sure I would have known.

22 Q In other words, you don't know whether Armstrong
23 knew --

24 A Specifically whether Thomasville was available
25 for acquisition, I don't know.

1 Q Do you know whether Armstrong had discussed the
2 possibility of merger or acquisition with Thomasville prior
3 to August 10, 1966?

4 A I knew of Mr. Banzhaf's meeting with Mr. Finch
5 but I did not know the details of that discussion.

6 Q What else did you discuss with Mr. Samuels on
7 August 10th?

8 A Well, again he spent a good deal of time
9 describing his method of operation, people he knew. Our dis-
10 cussions were in the area of our general acquisition inter-
11 ests in the furniture field, in the carpet field. At that
12 time we were still in the packaging business and had some,
13 I would say, less urgent priority interests there, but still
14 some priority interests and we were even at that time begin-
15 ning to think about an interior finishing package.

16 I think we talked to him generally at that time
17 about what our acquisition objectives were. I am sure we
18 mentioned some of the things we had done and thought about.
19 But this was a relatively short exploratory visit on both
20 parties' parts.

21 Q How did Mr. Samuels describe his method of
22 operation?

23 A Well, as I recall, it was largely by describing
24 a half dozen or so specific deals that he was involved in.

25 Q Do you remember the names of any of them?

1 A As you know, I talked subsequently to Mr.
2 Samuels a great many times and I heard him describe a number
3 of his operations, and I can't sort it out. I don't recall
4 which ones he mentioned on this visit.

5 Q Did he indicate at the time that he had had
6 handled some furniture mergers and acquisitions?

7 A I think it likely that he did. I don't remem-
8 ber any specific ones at that time that he mentioned.

9 Q But I take it you still have no recollection
10 as to any specific names of furniture companies that were
11 mentioned on August 10th?

12 A No, I really don't. I can remember furniture
13 companies that Mr. Samuels mentioned to me, but, as I am sure
14 you know from the record, we talked a number of times and we
15 were involved in investigations of some furniture companies,
16 and I can't say specifically that the first time he mentioned
17 Johnson-Carper, for example, was at this meeting or was a month
18 or two later.

19 Q Did you ask him to give you an evaluation of
20 a possible acquisition by Armstrong of Morgan Manufacturing
21 Company?

22 A If I recall correctly, we didn't at that
23 August 10th meeting.

24 Q How did you finally leave Mr. Samuels on
25 August 10th?

1 A I think we indicated to him that we were in-
2 terested, that we felt a written contract was in order, and
3 that if he would submit to us what was an appropriate con-
4 tract, we would consider the matter and contact him again.

5 Q Did you do any further checking on Mr. Samuels
6 after that or before that, after your initial contact with
7 Mr. Schmidt?

8 A The only other specific inquiry that I can
9 recall was made to Morgan Guaranty, which is our principal
10 New York bank.

11 Q To whom did you speak at Morgan Guaranty?

12 A I don't recall specifically.

13 MR. SCHURTMAN: Would you produce a memo dated
14 August 12, 1966, signed by Mr. Donnelly, which I will ask the
15 Reporter to mark as Plaintiff's Exhibit 20 for identification?

16 MR. PENNOYER: I hand it to you.

17 (Plaintiff-Donnelly Exhibit No. 20,
18 Memo dated August 12, 1966, from
19 Mr. Donnelly, was produced and
20 marked for identification.)

20 BY MR. SCHURTMAN:

21 Q I show you Plaintiff's Exhibit 20. Did you
22 prepare this memo, Mr. Donnelly?

23 A I am sure I did.

24 Q Does it refresh your recollection that it was
25 Mr. Tom Kellogg that you spoke to?

1 A It says it there, so I assume it was. You
2 remember here in this instance that I was in contact with
3 Morgan almost daily and with several dozen people there.

4 Q I am also looking at a letter dated September
5 16, 1966 from Watson Blair, Vice President of Morgan Guaranty,
6 to you.

7 MR. SCHURTMAN: I wonder if we could have that
8 produced. I will have that marked as Plaintiff's Exhibit 21
9 for identification.

10 MR. PENNOYER: I hand it to you.

11 (Plaintiff-Donnelly Exhibit No. 21,
12 Letter dated September 16, 1966
13 from Watson Blair, was produced
and marked for identification.)

14 BY MR. SCHURTMAN:

15 Q Now, I show you Plaintiff's Exhibit 21 for
16 identification which has attached to it a memorandum concern-
17 ing Mr. Samuels, dated September 14, 1966, and which we will
18 deem part of Plaintiff's Exhibit 21 for identification.

19 Did you receive this letter from Mr. Blair?

20 A I am sure I did.

21 Q And the attached memorandum concerning Mr.
22 Samuels?

23 A Yes.

24 Q Did you also draw a Dun & Bradstreet on Mr.
25 Samuels?

1 A I think we did. I am not certain of that but I
2 think we did. It would have been normal for us to.

3 Q Now, did you discuss Mr. Samuels with anyone
4 else outside Armstrong before you entered into an agreement
5 with him?

6 A I am searching my memory on that point but I
7 can't recall anyone else.

8 MR. SCHURTMAN: Mr. Pennoyer, could I ask you
9 for the original of the letter dated August 12, 1966 from Mr.
10 Samuels to Mr. Warnock, Mr. Binns, and Mr. Donnelly, attached
11 to which is a draft of a proposed agreement?

12 I will ask the Reporter to mark the letter and
13 attached draft as Plaintiff's Exhibit 22 for identification.

14 MR. PENNOYER: I hand them to you.

15 (Plaintiff-Donnelly Exhibit No. 22,
16 Letter dated August 12, 1966, to
17 Mr. Warnock, et al., from Mr.
18 Samuels, with attached draft of
19 agreement, was produced and marked
20 for identification.)

21 BY MR. SCHURTMAN:

22 Q Mr. Donnelly, before I leave Plaintiff's
23 Exhibit 21 for identification, I notice there is a handwritten
24 comment which seems to say: I asked Watty to confirm their
25 earlier report. Thought you would be interested. Signed,
Fred.

Is that your handwriting?

1 A Yes.

2 Q To whom was that addressed?

3 A The letter was routed to these people that are
4 shown up here.

5 Q Mr. Binns, Mr. Banzhaf, Mr. Jensen. Did any of
6 them have any comments to make to you about this letter?

7 A Not that I can recall.

8 Q Now, I show you Plaintiff's Exhibit 22 for
9 identification. Did you receive a copy of that letter and the
10 enclosed draft?

11 A Yes, I believe I did.

12 MR. SCHURTMAN: Incidentally, Mr. Pennoyer,
13 since this letter was addressed to three persons, am I to
14 assume that three letters were sent or was it a single letter
15 addressed to all three?

16 MR. PENNOYER: I don't know.

17 MR. KEIHNER: I don't know, either.

18 MR. PENNOYER: I think we only have the one,
19 don't we?

20 THE DEPONENT: It doesn't show any copies on
21 here so I assume it was just probably one letter.

22 MR. PENNOYER: That is my belief.

23 BY MR. SCHURTMAN:

24 Q And it was routed to you, is that your
25 recollection?

1 A Yes. I am not sure whether I got it first or
2 not.-

3 Q On the attached draft there is some handwritten
4 notation. Can you identify the handwriting?

5 A I can't. I don't know whose handwriting that is.

6 Q With whom did you discuss this letter and draft?

7 A I am sure with Mr. Warnock and Mr. Binns, since
8 the letter was also addressed to them, and I am also sure I
9 discussed it with our Legal Department.

10 Q Who in your Legal Department would that have
11 been?

12 A I can't be sure. It may have been Mr. Bitner,
13 but I am not sure.

14 Q Was Mr. Trigg in your Legal Department at that
15 time?

16 A You embarrass me. I think he was.

17 Q Do you remember discussing it with Mr. Trigg?

18 A No, I don't, specifically.

19 Q Who redrafted this agreement, the proposed
20 agreement?

21 MR. PENNOYER: Objection to the word, redrafted.

22 BY MR. SCHURTMAN:

23 Q Who drafted Armstrong's version of the proposed
24 agreement with Mr. Samuels?

25 A Our Legal Department.

1 Q Did you participate in the drafting?

2 A It depends a little bit on how you define the
3 word, participate. I was a party to the discussions that
4 involved Armstrong's position with regard to this. I don't
5 believe I was specifically consulted as to the legal form or
6 the wording.

7 Q And who else participated in these discussions?

8 A Again I would assume Mr. Warnock and Mr. Binns
9 would have consulted on this. I don't remember specifically.
10 Really, all I can do is to tell you who I think would normally
11 have been consulted in this kind of situation.

12 Q Have you listed them all?

13 A It is possible that Mr. Banzhaf could have been
14 consulted at some point. It is possible that Mr. Jensen
15 would have.

16 Q Who is Mr. Jensen? What was his position?

17 A Mr. Jensen was a Vice President of the company.
18 We are back on August 10, 1966, aren't we? At that point he
19 would have been the Vice President and General Manager in
20 Floor Operations, I believe. That was before he moved into
21 the President's Office, which would make it unlikely that he
22 was consulted on this. His principal interest at that time,
23 as I remember, was in the carpet area.

24 MR. SCHURTMAN: Mr. Pennoyer, would you be good
25 enough to produce the letter agreement dated August 25, 1966

1 between Armstrong and Mr. Samuels, which I will ask the
2 Reporter to mark as Plaintiff's Exhibit 23 for identification.

3 MR. PENNOYER: I hand it to you.

4 (Plaintiff-Donnelly Exhibit No. 23,
5 Letter dated August 25, 1966, was
6 produced and marked for identification.)

7 BY MR. SCHURTMAN:

8 Q I show you Plaintiff's Exhibit 23 for identifi-
9 cation. Is that your signature on Page 3?

10 A Yes. It looks like it.

11 Q Do you know when and where Mr. Samuels signed
12 this agreement?

13 A I don't remember his signing it specifically.
14 I believe he was in Lancaster on the 25th and it is likely
15 that he signed it then.

16 Q Who prepared the agreement that we have marked
17 as Plaintiff's Exhibit 23?

18 MR. PENNOYER: Do you mean who typed it?

19 BY MR. SCHURTMAN:

20 Q The typist's initials are SES. Who is SES, by
21 the way?

22 A This draft would have been my secretary, Sarah
23 E. Snyder, to be exact.

24 Q But do you know who prepared the text which was
25 included in Plaintiff's Exhibit 23?

1 MR. PENNOYER: Do you mean who chose the words;
2 is that your question?

3 MR. SCHURTMAN: I assume Miss Snyder did not
4 draft this agreement herself. Or did she?

5 MR. PENNOYER: The record already shows that
6 at least some of it came from Mr. Samuels.

7 MR. SCHURTMAN: I think my question is clear
8 but I will try to clarify it further.

9 BY MR. SCHURTMAN:

10 Q Mr. Samuels sent you a draft of a proposed
11 agreement. That much we have established. You then had
12 discussions with various people at Armstrong. You spoke to
13 someone in the Legal Department. At some point I assume that
14 someone in Armstrong, or possibly several people at Armstrong,
15 got together and prepared the text based in part on Mr.
16 Samuels' suggestion, which ultimately resulted in the August
17 25 agreement.

18 Now, what I am trying to find out is who put
19 together this particular configuration of words?

20 A I thought we had sort of been over that ground.
21 I don't know specifically who in the Legal Department put
22 together that configuration of words, in those cases where
23 they were changed from Mr. Samuels'.

24 Q But as far as you know it was someone in your
25 Legal Department?

1 A Yes, as far as I know.

2 Q Do you have any recollection of discussing with
3 anyone the specific changes that were made in Mr. Samuels'
4 draft, the specific language changes?

5 MR. PENNOYER: Do you mean any of the changes?

6 MR. SCHURTMAN: Yes.

7 THE DEPONENT: I don't specifically recall the
8 discussions. I am certain, however, that whoever it was in
9 our Legal Department that was handling this did review them
10 with me since my role at that time was to act as a contact
11 with Mr. Samuels.

12 BY MR. SCHURTMAN:

13 Q Do you recall discussing in your review the
14 differences between the act of finding, the act of negotiating,
15 and the act of consummating?

16 MR. PENNOYER: Insofar as there may have been
17 discussions along these lines with counsel, I will instruct
18 the witness not to answer.

19 MR. SCHURTMAN: Are you claiming attorney-
20 client privilege?

21 MR. PENNOYER: To that extent, yes.

22 BY MR. SCHURTMAN:

23 Q Did you discuss it with anyone other than
24 counsel?

25 A Discuss what?

1 Q The difference, if any, between finding,
2 negotiating, and consummating.

3 A With anyone other than counsel, I can't recall
4 a discussion like that.

5 Q Did you discuss it with Mr. Samuels?

6 A I don't recall discussing it with him.

7 Q I believe you testified that it was your
8 recollection that Mr. Samuels did come to Lancaster on August
9 25?

10 A As I remember it, yes.

11 Q Was this his second visit to Lancaster?

12 A As I recall, it was his second visit.

13 Q Who had arranged that visit?

14 A As I recall, the purpose of the visit was two-
15 fold, one, to discuss the agreement, and second, to consult
16 with Mr. Samuels and ask him to take a look at an individual
17 deal that we were considering.

18 Q Which deal?

19 A As I remember, that was Morgan Manufacturing.
20 I am not certain I have the name of the company right but
21 a small furniture company in western North Carolina.

22 Q How long was Mr. Samuels in Lancaster on that
23 visit?

24 A As I remember, about the same amount of time
25 as his first visit.

1 Q With whom did he meet?

2 A He met with me, and as I remember it, with Mr.
3 Banzhaf. I mentioned Mr. Ellis earlier. I think it may have
4 been at this visit when he met Mr. Ellis.

5 Q Did he meet Mr. Warnock or Mr. Binns?

6 A I don't remember that on this visit. I think
7 he may have met Mr. Jones on this visit, too.

8 Q Who was he?

9 A He at that time was the Vice President and
10 General Manager of our Building and Industry Products
11 Operations. As I remember, Mr. Samuels had a company to pro-
12 pose and he wanted to talk to Mr. Jones about it.

13 Q Do you recall whether you had any discussion
14 about the fee agreement with Mr. Samuels on that occasion?

15 A I don't recall any specific discussion, no.
16 I believe he signed it when he was there that time, but I
17 don't recall him signing it specifically.

18 Q And then you say you did discuss the Morgan
19 acquisition with him?

20 A I was a party to those discussions, yes.

21 Q Did you discuss any other furniture acquisi-
22 tions with him?

23 A I don't recall any specific furniture acquisi-
24 tions that were discussed at that time.

25 Q Was Thomasville mentioned during that meeting?

1 A Not that I recall.

2 Q Or Mr. Finch?

3 A Not that I recall.

4 Q Do you recall any other specific furniture
5 companies being discussed during that meeting?

6 A Talking now about --

7 Q August 25.

8 A August 25, no, I can't recall whether Johnson-
9 Carper, for example, or Kroehler were mentioned at that
10 particular visit or not.

11 Q When was the next time you met Mr. Samuels?

12 A Personally?

13 Q Yes.

14 A I believe that it was in Chicago on what would
15 have been about October 5. I may be off on the date but it is
16 about that.

17 Q Did Mr. Samuels come to Lancaster for a third
18 time prior to October 5?

19 A I don't remember his being here a third time.

20 Q You only recall two visits to Lancaster?

21 A That is all I remember.

22 Q Did he come to Lancaster at some later point?

23 A I don't believe so.

24 Q Now, the Chicago visit of October 5, what was
25 that all about?

1 A Mr. Banzhaf and I went to Chicago for two
2 reasons. The one that specifically relates to Mr. Samuels
3 had to do with Kroehler and a call, as I remember, from Mr.
4 Samuels indicating the availability of a sizable block of
5 Kroehler stock and suggesting that we might want to take a
6 look, which, as you know, we did while we were in Chicago.

7 Q How long were you and Mr. Samuels and Mr.
8 Banzhaf together on that Chicago trip?

9 A As I remember, it was about a half a day. I
10 believe we met him out there. I can't recall his being with
11 us on the way out. I know that during that visit Mr. Banzhaf
12 and I also spent an hour or two at a Chicago bank, and as I
13 remember, Mr. Samuels was not with us.

14 Q During that visit did you discuss other furni-
15 ture companies with Mr. Samuels?

16 A I think it is very possible that we did.

17 Q Did you compare Kroehler with other companies
18 that you might be interested in?

19 A I don't specifically remember comparing Kroehler
20 with other furniture companies.

21 Q Do you remember discussing Johnson-Carper?

22 A As I recall, and again I am not clear on my
23 times here, but it seems to me that -- I have forgotten
24 whether Mr. Banzhaf had been to Roanoke -- it seems to me
25 we were in Roanoke and talked to the Johnson-Carper people

1 prior to the Chicago trip, in which case it is very likely
2 that we discussed Johnson-Carper with Mr. Samuels.

3 Q Are you saying that you and Mr. Banzhaf visited
4 Johnson-Carper in Virginia?

5 A Yes.

6 Q Was this at Mr. Samuels' suggestion?

7 A Yes.

8 Q Were you interested in Johnson-Carper at the
9 time?

10 A Interested enough to take a look at them.

11 Q And after you took a look at them --

12 A No, not seriously.

13 Q Did you discuss any other furniture companies
14 with Mr. Samuels during that Chicago trip?

15 A I can't recall discussing any specifically.

16 Q Did you discuss Thomasville with him?

17 A I don't recall discussing them specifically.

18 In that connection, while we were in Chicago we visited the
19 Chicago bank, First Chicago as I recall, which was part of a
20 two-part program, really, that the two banks that are perhaps
21 the most active in the furniture industry are First National
22 in Chicago and the Wachovia Bank.

23 I think it is very likely, since we were seeing
24 the Chicago Bank, while we were out there with Mr. Samuels
25 it is very possible we mentioned the Wachovia visit which was

1 scheduled in another week or two.

2 You asked about Thomasville. It is not im-
3 possible that I made some -- or Mr. Banzhaf may have -- I may
4 have -- he may have made some reference to the fact that the
5 President of Wachovia was on Mr. Finch's board and Mr. Finch
6 of Thomasville was on the Wachovia board, since Mr. Samuels,
7 I believe, knew from our first visit that we considered
8 Thomasville the most desirable acquisition in this field.

9 Q Had you told Mr. Samuels, during the first
10 visit, that you considered Thomasville the most desirable
11 acquisition?

12 A I think it likely that I did because they were,
13 and we did discuss our general objectives in that field.

14 Q Do you have any specific recollection that you
15 did?

16 A Not beyond the fact that we did discuss our
17 interest in the furniture industry, and in the course of do-
18 ing that I think it very likely that we may have mentioned
19 Thomasville.

20 Q Mr. Donnelly, you keep using the phrase that
21 you think it very likely, which I think borders upon the
22 speculation that Mr. Pennoyer objected to before. I am try-
23 ing to establish for the record; I am not trying to be picky
24 about it, but do you have any specific recollection of
25 having told Mr. Samuels on August 10th that you were

1 interested in Thomasville?

2 MR. PENNOYER: Note my objection to the pre-
3 amblatory remark, and go ahead and answer the question.

4 THE DEPONENT: I do not have a specific
5 recollection of having discussed Thomasville on August the
6 10th although I think it probable.

7 MR. SCHURTMAN: I suppose since you have made
8 motions to strike, Mr. Pennoyer, I should do the same. I
9 will move to strike the witness' views as to the probability
10 of it. I will ask that only the first part of his answer
11 be considered.

12 BY MR. SCHURTMAN:

13 Q With whom did you speak at First National Bank
14 of Chicago while you were in Chicago?

15 A As I recall that visit we talked to two people
16 and here again I will have to ask you to be patient with me
17 because I talk to a great many bankers every day.

18 Q Let me suggest a couple of names. Mandelbaum?

19 A Mandelbaum, and I know that I had --

20 Q Badger?

21 A Badger I believe is correct. At least those
22 are two names that I remember, if you will pardon the ex-
23 pression, that it is likely that those are the two that we
24 saw that day.

25 Q What did you tell them?

1 A I think our discussion was of our interest in
2 this case specifically in the furniture industry.

3 Q Did you tell them you were particularly interest-
4 ed in Thomasville?

5 A I think it likely that we did.

6 Q Did you ask them to look into the Thomasville
7 situation for you?

8 A No, I don't believe we did.

9 Q Now, you mentioned that prior to your trip to
10 Chicago a meeting had been set up at the Wachovia Bank?

11 A I mentioned our plan.

12 Q Yes, I don't mean that the meeting took place;
13 that arrangements had been made for a meeting to take place.

14 A Again we planned to go to Wachovia. I am not
15 certain that the arrangements had been made at that point in
16 time. But we did plan a meeting at Wachovia.

17 Q Had arrangements been made at that point to
18 meet with Mr. Finch of Thomasville?

19 A At what point?

20 Q At the point of your Chicago visit.

21 A I don't recall specifically.

22 Q But you think you mentioned to Mr. Samuels that
23 you planned to go to Wachovia?

24 A I think it probable that we did.

25 Q And did you tell him that you were planning to

1 meet with Mr. Finch on that occasion?

2 A I don't specifically recall that.

3 Q Was Mr. Samuels along when you went to the First
4 National Bank of Chicago?

5 A I don't believe so.

6 Q At what point in your trip did that fit in? As
7 I recall it, the Kroehler plant was outside of Chicago.

8 A As I remember, we went to the bank first and to
9 Kroehler later that day, but I am not certain of that, the
10 timing.

11 Q Did the Kroehler possibility fall through?

12 A In the sense that you mean it, I think it did,
13 yes.

14 Q I show you a memo that has previously been
15 marked as Plaintiff's Exhibit 11 for identification, a memo
16 from Mr. Banzhaf dated October 6, 1966 addressed to Fred. Are
17 you the Fred that this was addressed to?

18 A I think so.

19 Q Did you receive this memo from Mr. Banzhaf?

20 A I believe I did.

21 Q There is a reference in that memo to, I will
22 quote the language: "Harry feels they may try to buy it but
23 Harry wants to beat them to it on his own account." Do you
24 know what the word, they, referred to, or who it referred to?

25 A No, I don't.

1 Q After the Kroehler possibility fell through did
2 you then decide to concentrate on Thomasville?

3 A I don't think the Kroehler investigation really
4 had any effect on our feelings as far as Thomasville were con-
5 cerned.

6 Q Do you recall asking Mr. Samuels at about that
7 time to find out whether Tom Finch of Thomasville would be
8 interested in selling or merging?

9 MR. PENNOYER: Objection.

10 MR. SCHURTMAN: What is the basis of your
11 objection?

12 MR. PENNOYER: The premise is assumed.

13 MR. SCHURTMAN: Would you read back my question,
14 please?

15 (Question read)

16 MR. SCHURTMAN: I think the form is proper. I
17 will let the question stand.

18 BY MR. SCHURTMAN:

19 Q What is the answer?

20 A No, I do not.

21 Q Did you have any telephone conversations with
22 Mr. Samuels between October 6 and October 10, 1966?

23 A I don't recall.

24 Q Would you have any records to indicate whether
25 you had such telephone conversations?

1 A I am not sure whether we do or not.

2 Q Do you keep a diary?

3 A Not of telephone calls. No, I don't keep a
4 diary as such.

5 Q Do you keep an appointment book?

6 A Yes.

7 Q Does the appointment book indicate telephone
8 calls?

9 A Not usually.

10 Q What records are kept of telephone calls, if any,
11 any?

12 A The central switchboard keeps some sort of a
13 record of ingoing and outgoing calls. I can't tell you ex-
14 actly what they have.

15 MR. SCHURTMAN: Mr. Pennoyer, if there are any
16 records which would indicate telephone calls to or from Mr.
17 Samuels, I would ask that they be produced so we can fix the
18 date.

19 MR. PENNOYER: It is my understanding that
20 there were some but under the retention, they no longer exist.
21 Am I right, Mr. Trigg? I think we checked that.

22 MR. TRIGG: I believe it was checked but I
23 don't know.

24 MR. PENNOYER: All right, we will check again.

25 BY MR. SCHURTMAN:

1 Q In any event, you have no recollection of any
2 telephone conversations between October 6 and October 10?

3 A Not specifically, no.

4 MR. SCHURTMAN: I wonder if you could show the
5 witness Defendant's Exhibit EEE.

6 BY MR. SCHURTMAN:

7 Q Do you remember receiving the copy of a letter
8 dated October 10, 1966 from Mr. Samuels to Mr. Banzhaf which
9 your counsel has marked as Defendant's Exhibit EEE?

10 A I don't remember it specifically but I am sure
11 I did.

12 Q Let me direct your attention to the post script.
13 You have seen that post script before, have you not?

14 A Yes.

15 Q Did you discuss that post script with Mr.
16 Samuels?

17 A No, I have no recollection of discussing it with
18 him. We didn't consider it very good advice.

19 Q Had you told Mr. Samuels that you were having
20 a bank executive set up a meeting with Mr. Finch?

21 A As I said before, I think it is entirely
22 possible that during our Chicago visit our plans to visit
23 Wachovia were mentioned.

24 Q Do you have any specific recollection whether
25 they were?

1 A Not specific, no.

2 Q Do you have any knowledge or information as
3 to how Mr. Samuels might have known about the fact that you
4 were trying to set up a meeting with Finch?

5 A I think he may very well have assumed that from
6 our discussions in Chicago, and while I have no specific
7 recollection of mentioning the meeting to Mr. Samuels in
8 Chicago, it would not have been unnatural to mention that
9 possibility.

10 Q If you did mention that possibility to him in
11 Chicago, would you also have told him to stay out of the
12 Thomasville situation?

13 A If I had thought it necessary.

14 Q But you have no recollection of having done so?

15 A No, not at that point.

16 Q Speaking up to October 10, 1966, had Mr.
17 Banzhaf ever asked you to make certain that Mr. Samuels
18 would not become involved in the Thomasville situation, that
19 this was his baby, so to speak?

20 A I don't recall any specific request of that
21 nature from Mr. Banzhaf. We never considered Mr. Samuels a
22 part of the Thomasville investigation at any point or I never
23 did.

24 Q When you received this post script from Mr.
25 Samuels dated October 10, 1966, wasn't this some indication

1 to you that Mr. Samuels was getting involved in the Thomas-
2 ville situation?

3 A Not necessarily. I think I interpreted it as a
4 bit of free advice and not very good advice.

5 Q But you never communicated with Mr. Samuels
6 about this post script?

7 A Not that I recall.

8 Q Did you discuss the post script with anyone
9 else?

10 A I don't have any specific recollection of it.
11 I think it is possible that I would have made some reference
12 to it to Mr. Banzhaf but I am not certain.

13 Q Did you discuss it with Mr. Binns or Mr.
14 Warnock?

15 A I don't recall.

16 Q Had Mr. Binns or Mr. Warnock asked you to make
17 certain that Samuels would not become involved with the
18 Thomasville situation?

19 MR. PENNOYER: Do you mean up to this time?

20 BY MR. SCHURTMAN:

21 Q Up to this time.

22 A Not that I recall. And then again, I don't
23 think any of us felt that Mr. Samuels was any part of our
24 interest in Thomasville.

25 Q Had you told Mr. Samuels, up to this time, that

1 a merger with Thomasville might create certain problems for
2 Armstrong?

3 A I have no recollection of anything like that.

4 Q Were you aware of the fact that Mr. Finch and
5 his family owned the largest block of stock in Thomasville?

6 A I think I was.

7 Q Had you given any consideration to the fact that
8 if there was a merger or some stock for stock exchange with
9 Armstrong, Mr. Finch and his family would become either the
10 largest or one of the largest stockholders of Armstrong?

11 A I think that subject may have been discussed.

12 Q Did you discuss it with your fellow executives
13 at Armstrong?

14 A It is possible it was discussed. I don't
15 specifically recall the discussion.

16 Q Was there any discussion that this might
17 create a problem within Armstrong, having someone from North
18 Carolina come along to be the largest stockholder of Arm-
19 strong?

20 A I can only answer that in the context of a lot
21 of discussions, that the Acquisition Committee and Mr.
22 Banzhaf and Mr. Binns and various other people had about a
23 lot of possible acquisitions and about a lot of problems that
24 may have arisen.

25 I know of no case where we had anything under

1 consideration that was perfect, and we discussed the assets
2 and the liabilities, and in that sense I feel reasonably sure
3 that this aspect of our Thomasville interest was likely dis-
4 cussed.

5 MR. SCHURTMAN: Would you show the witness
6 Plaintiff's Exhibit 13 for identification, the letter dated
7 October 11, 1966 from Mr. Donnelly to Mr. Fentress?

8 BY MR. SCHURTMAN:

9 Q Do you remember sending that letter to Mr.
10 Fentress?

11 A Now that I see it, I do.

12 Q Who was Mr. A. C. Hunt?

13 A One of the bank officials.

14 Q Do you remember when you had your conversation
15 with Mr. Hunt?

16 A Not specifically.

17 Q When you received Defendant's Exhibit EEE for
18 identification, that is the one with the post script --

19 A . Right.

20 Q Were you aware of the fact that Mr. Samuels
21 had placed a telephone call to Mr. Finch?

22 A I have no recollection of that.

23 Q Did you fly down to Winston-Salem on October
24 18, 1966?

25 A As I remember it, yes.

1 Q Who was with you?

2 A I believe Mr. Banzhaf and Mr. Ellis and I and
3 my wife.

4 Q Did you meet at the Wachovia Bank and Trust
5 Company?

6 A Yes.

7 Q Did you meet Mr. Finch there?

8 A Yes, I believe we did that day.

9 Q How long was the meeting with Mr. Finch?

10 A I didn't time it. I would say it might have
11 been 45 minutes or so.

12 Q Where did you meet with him?

13 A In the bank.

14 Q Who was present at that meeting?

15 A Again, as I remember, I believe just Mr. Banzhaf,
16 Mr. Ellis and myself.

17 Q What did you discuss?

18 A Our interest in Thomasville.

19 Q Did you tell Mr. Finch that you wanted to
20 acquire Thomasville?

21 A I told him we felt that it was a possibility
22 that was worth considering, worth his consideration, that we
23 were interested.

24 Q What did he say?

25 A He indicated some interest and said, as I

1 remember it, that he would think about it and let us know.

2 Q Did you carry on the discussion on behalf of
3 your group?

4 A No, I didn't.

5 Q Who did?

6 A Mr. Banzhaf.

7 Q Did you discuss any possible terms of a merger?

8 A Not that I recall.

9 Q Was Mr. Watlington at that meeting?

10 A Not that I recall.

11 Q Had you spoken to Mr. Watlington about acquiring
12 Thomasville?

13 A As I recall, we spoke to him before we talked
14 to Mr. Finch.

15 Q Where, at the Wachovia Bank?

16 A Yes.

17 Q What did he say?

18 A Well, as I remember his reaction was positive.
19 He seemed to feel that this kind of a merger might be good
20 for both parties. That is just my impression.

21 Q Was Armstrong a client of Wachovia at the time?

22 A As I recall, we had some local accounts with
23 them and I believe also their Trust Department was a signifi-
24 cant holder of Armstrong stock, as I remember from the
25 Treasurer's side of the business.

1 Q Did Mr. Samuels' name come up in your dis-
2 cussion with Mr. Finch?

3 A I have no recollection of that at all.

4 Q Subsequent to your meeting with Mr. Finch did
5 you inform Mr. Samuels that you had met Mr. Finch?

6 A Subsequent? After the meeting? I don't remember
7 specifically mentioning it to him, although I may have.
8 Again, remember, we talked frequently.

9 Q Well, he had written you that post script that
10 we have been talking about.

11 A Yes.

12 Q Where he advised against setting up a meeting
13 with Mr. Finch through a bank executive.

14 A Right.

15 Q Did this subsequently lead you to tell Mr.
16 Samuels that you had in fact had such a meeting?

17 A Not that I recall. I think we pretty much
18 ignored that post script.

19 Q When was the next time you met Mr. Finch?

20 A I believe the second time I met Mr. Finch was
21 here in Lancaster on the 4th or 5th of January, sometime
22 about those dates.

23 BY MR. PENNOYER:

24 Q Just for the record, nineteen sixty --

25 A Seven.

1 BY MR. SCHURTMAN:

2 Q Do you remember meeting a Mr. Mewborne of
3 Wachovia?

4 A How do you spell that name?

5 Q M-E-W-B-O-R-N-E.

6 A No, I don't.

7 Q He came to Lancaster shortly after your meeting
8 with Mr. Finch.

9 A I don't believe I saw him.

10 Q I will show you Plaintiff's Exhibit 2 for
11 identification which is a letter dated October 26, 1966 from
12 Mr. Mandelbaum of First National Bank of Chicago to you. Did
13 you receive that letter from Mr. Mandelbaum?

14 A I believe I did.

15 Q Would you direct your attention to Paragraphs
16 2 and 3 of this letter? Did you regard this as a follow-up
17 to your discussion in Chicago?

18 A Only in a very general way, in the sense that
19 during our Chicago visit we made plain to these people that
20 we were interested in the furniture business.

21 Q Had you asked First National to look into the
22 Thomasville situation for you?

23 A I don't recall us asking them to take any
24 specific action of any kind as far as our furniture interests
25 were concerned. I think we hoped that they might be helpful,

1 but it was just another resource that we felt we should avail
2 ourselves of.

3 Q I show you Plaintiff's Exhibit 3 for identifica-
4 tion which is a schedule of Mr. Finch's visit to Lancaster in
5 January, 1967. Are you familiar with that schedule?

6 A Yes, I remember it.

7 Q Do you recall discussing the possibility of a
8 merger or acquisition with Mr. Finch at any time during that
9 visit?

10 A Do I personally recall discussing it?

11 Q Yes.

12 A No, I don't.

13 Q Were you present at any discussion, either you
14 alone or with other Armstrong executives, at which the
15 possibility of a merger or acquisition was discussed with Mr.
16 Finch? And perhaps you could look through the schedule and
17 see if there is any meeting that attracts your attention?

18 A Of course, the subject of this whole visit was
19 to investigate that possibility and I was present at the
20 dinner on the 4th and the dinner on the 5th and the luncheon
21 on the 6th, and as I remember it, there was some general
22 discussion having to do with what advantages might be present
23 in a Thomasville-Armstrong merger.

24 Q Who was present at that discussion?

25 A Would you like me to read these names to you?

1 Q Were all of them present at that time?

2 A At these dinners and lunches, yes.

3 Q Yes, but do you recall who was present when the
4 merger possibility was specifically discussed?

5 A Again, the subject of this whole visit was to
6 review that merger possibility and it was a part of the two
7 dinner discussions and the luncheon discussion. That is what
8 we were there for.

9 Q Did Mr. Finch indicate whether he was interested
10 in merging with Armstrong?

11 A Here again my exposure at this meeting was at
12 these two dinner and luncheon meetings. My recollection is
13 that he and his associates seemed interested.

14 Q How did you finally leave matters?

15 A Well, I wasn't a party to that. I believe
16 there were subsequent meetings. I know there were. But I
17 wasn't a party to those.

18 As I am sure you understand -- or maybe you
19 would like me to explain again what my role was, as far as
20 Armstrong is concerned, in this.

21 Q I would.

22 A I was a member of the Acquisition Committee as
23 a part of my job as Treasurer. It was in the general dis-
24 cussions within the Acquisition Committee. There were task
25 forces that zeroed in on specific interests. The furniture

1 task force, as you know, was headed up by Mr. Banzhaf.

2 At this particular point I believe the leader-
3 ship in the Thomasville investigation was clearly in the hands
4 of the President's Office.

5 Q That was Mr. Warnock?

6 A Mr. Warnock, Mr. Binns, Mr. Painter to some
7 degree. My what seemed to be unusual involvement in here was
8 as a result of my having been designated as the corporate
9 contact man with Mr. Samuels. Our interests in working with
10 him extended, as you know, well beyond furniture, and it
11 seemed to make sense to have one person in Armstrong handle
12 the direct contacts with Mr. Samuels and work with the
13 various elements of the company that were interested in the
14 particular acquisitions he may have suggested or proposed,
15 and these, as you also know, fell into a number of fields
16 other than furniture.

17 Q Now shortly after that meeting in January, 1967,
18 did you receive any information that Mr. Samuels had been in
19 touch with Mr. Finch?

20 A Yes, I did.

21 Q What was the information you received and from
22 whom?

23 A As I recall, I received information from Mr.
24 Banzhaf, I don't remember the exact date, but sometime in
25 the following week, as I remember, that Mr. Samuels had

1 talked briefly to Mr. Finch in Chicago.

2 Q Did Mr. Banzhaf indicate how he had learned
3 that?

4 A I believe he learned that from Mr. Warnock.

5 Q What else did Mr. Banzhaf say?

6 A He passed on to me Mr. Warnock's very strong
7 directive to do everything I could to make certain that Mr.
8 Samuels did not involve himself with Mr. Finch or with the
9 Thomasville matter.

10 Q What did you say?

11 A I was in agreement with that.

12 Q Did you do anything about it?

13 A I talked with Mr. Samuels and asked him not to
14 involve himself with Mr. Finch or Thomasville.

15 Q When did you talk to Mr. Samuels about that?

16 A I don't recall the date.

17 Q Was it personally or by telephone?

18 A It was by telephone.

19 Q What specifically did you say to him?

20 A I don't remember the words but the sense of
21 what I said to him was, as I indicated, I asked him not to
22 involve himself with the Thomasville matter.

23 Q Did you tell him why not?

24 A I don't remember specifically what I told him.
25 I think it likely that I told him that we did not feel, and

1 never did feel, that he had a role to play as far as Thomas-
2 ville was concerned.

3 Q Do you have any specific recollection of
4 telling him that?

5 A I have a specific recollection of us discussing
6 the matter with him and asking him not to involve himself with
7 Thomasville.

8 Q But you do not have a specific recollection of
9 giving him the reasons for your request?

10 A I don't specifically recall giving him the
11 reasons, no.

12 Q Did you ever advise him in writing not to become
13 involved with Thomasville?

14 A I never felt it was necessary.

15 Q Incidentally, going back to Plaintiff's Exhibit
16 2 for identification, there is a handwritten notation in the
17 margin. Is that your handwriting?

18 A No.

19 Q Do you know whose handwriting it is?

20 A No, I have no idea.

21 Q Do you know what it refers to?

22 A I don't know any more than what it says down
23 there.

24 Q Do you know what the black book is that
25 reference is made to?

1 A I am not certain. We have a lot of black books.
2 We had done considerable analysis work on Thomasville and
3 think it likely that this refers to a black book in which
4 those analyses were contained.

5 MR. SCHURTMAN: Mr. Keihner, is that black book
6 part of what was produced for me at the last session, the
7 contents of the black book?

8 MR. KEIHNER: I imagine it was. I didn't see
9 any particular black book. It wasn't in a black cover when
10 I got it. But the material, I assume, was produced.

11 BY MR. SCHURTMAN:

12 Q During your conversation with Mr. Samuels in
13 which you advised him that you did not want him to become
14 involved in the Thomasville situation, did you tell him that
15 you had met with Mr. Finch?

16 A I don't recall having discussed any of the
17 details. At this point we felt that the Thomasville matter
18 should be treated confidentially, and I would have been
19 reluctant, I think, to discuss it with anyone.

20 Q So your best recollection is that you did not
21 inform Mr. Samuels that you had met with Mr. Finch, first
22 in North Carolina, and then again in Lancaster?

23 A Let me separate your question, if I may. I
24 think it possible I may have made some reference to meeting
25 with Mr. Finch in North Carolina. I feel quite certain I

1 made no reference to our meeting in Lancaster.

2 Q Did you report back to anyone at Armstrong that
3 you had spoken to Mr. Samuels?

4 A At what time?

5 Q Well, that you had carried out Mr. Warnock's
6 directive.

7 A I think it probable that I did but I don't
8 specifically remember reporting to either Mr. Banzhaf or Mr.
9 Warnock.

10 Q Did you have any further conversations with Mr.
11 Samuels about Thomasville or Finch?

12 A After --

13 Q After the conversation you had with him in
14 which you carried out Mr. Warnock's directive. When did that
15 conversation take place, by the way? Can you fix it in
16 point of time?

17 MR. PENNOYER: The one with Mr. Warnock or the
18 one with Mr. Samuels?

19 BY MR. SCHURTMAN:

20 Q With Mr. Samuels.

21 A I can't put a date on it.

22 Q Was it in January?

23 A It would have been likely sometime the latter
24 part of the week of January, let me see, January the 8th was
25 a Sunday as I recall it -- and I think it might have been the

1 latter part of that week sometime.

2 Q After that January conversation with Mr.
3 Samuels, did you have any other conversations with Mr. Samuels
4 regarding Thomasville or Finch?

5 A I don't remember any specific conversations
6 with him. I certainly initiated none. I seem to recall that
7 on several subsequent conversations I had with Mr. Samuels
8 on other matters he may have inquired about our interest in
9 Thomasville, but at this point I was not in a position to
10 discuss it with him or with anybody outside the company.

11 Q Do you remember his calling you at some point
12 and telling you that he had spoken to Mr. Finch in Thomasville,
13 in North Carolina, that he had telephoned him?

14 MR. PENNOYER: Note my objection.

15 MR. SCHURTMAN: What is the basis of your
16 objection?

17 MR. PENNOYER: Again, the assumed premise.

18 MR. SCHURTMAN: I don't have any other way to
19 ask the question. There is no assumed premise. It is a
20 question.

21 THE DEPONENT: Would you repeat it, please?

22 (Question read)

23 THE DEPONENT: No, I don't recall that. I
24 think I would have recalled it because it was, I assume,
25 after it was that I had asked him not to involve himself

1 specifically with the Thomasville affair.

2 BY MR. SCHURTMAN:

3 Q Do you recall any other conversations or
4 communications you had with Mr. Samuels concerning Thomas-
5 ville and Mr. Finch other than what you have testified to
6 today?

7 A No, not specifically. Again, from the period
8 of really beginning, August the 10th, even beyond the first
9 week in January of 1967 I spoke on the phone fairly often
10 with Mr. Samuels, as I think you know. I don't know how many
11 telephone conversations there were but there were a good deal
12 more than I can sort out specifically with regard to content.
13 The subject of a number of these phone conversations was our
14 interest in the furniture business.

15 As I indicated earlier, with Mr. Samuels
16 Thomasville was mentioned in the general context of our
17 interest in the furniture business.

18 I do recall that the several times that it was
19 mentioned, Mr. Samuels' advice was consistent with the note
20 that he wrote, that he felt that we were wasting our time
21 with Thomasville.

22 Q When did these conversations take place?

23 A I don't recall the specific date.

24 Q Were they subsequent to January 9th?

25 A Subsequent to January 9th my only recollection

1 is that on one or two occasions Mr. Samuels asked me how we
2 were coming with Thomasville or something to that effect, and
3 as I indicated, I was not prepared to discuss it with him at
4 all.

5 Q When did you have the conversations in which
6 he told you again that he did not think Thomasville was a
7 likely possibility for you?

8 A I can't recall the dates.

9 Q Were they prior to January, 1967?

10 A Yes, they were prior to January of '67.

11 Q Did you tell him during any of these conversa-
12 tions that you were trying to find out if Mr. Finch wanted
13 to sell or wanted to be acquired?

14 A I don't recall specifically telling him that.
15 I think that from the first time that he came into Lancaster
16 he knew of our interest in Thomasville.

17 Q My question was, did you tell him that you were
18 trying to find out whether Mr. Finch would be interested in
19 selling or merging?

20 A Did I tell him that I specifically was trying to
21 find out --

22 Q Armstrong.

23 A I can't recall any specific comment to that
24 extent although it was inherent in our position.

25 MR. SCHURTMAN: Would you show the witness

1 Defendant's Exhibit EE for identification? That is a letter
2 dated January 5, 1968 from Mr. Samuels to Mr. Donnelly.

3 MR. PENNOYER: I am not sure I agree with you
4 about the date. I can't read it. But I am producing
5 Defendant's EE for identification.

6 MR. SCHURTMAN: Do you have the original of this
7 letter?

8 MR. KEIHNER: No.

9 MR. SCHURTMAN: You should.

10 MR. PENNOYER: We should have that. Apparently
11 we haven't been able to locate the original of this. On the
12 other hand, it doesn't appear that this particular copy is the
13 one marked in the deposition, though, does it? Maybe you
14 could help.

15 MR. SCHURTMAN: This particular copy is a
16 Xerox copy of Mr. Samuels' file copy which was marked in the
17 deposition. I have the file copy here.

18 MR. PENNOYER: All right, then, I can answer
19 your question. We have not been able to find the original.

20 MR. SCHURTMAN: The ribbon copy.

21 MR. PENNOYER: The ribbon copy of the exhibit.

22 BY MR. SCHURTMAN:

23 Q Let me show you Defendant's Exhibit EE for
24 identification. Did you receive this letter from Mr. Samuels?

25 A I don't remember this letter at all.

1 Q Do you remember discussing S. J. Bailey & Sons?

2 A No, I don't. There was quite a volume of these,
3 as you know, and it was my practice generally to refer them
4 to the person in the company that might be interested in it.
5 I just have no recollection at all of the Bailey matter.

6 Q Looking at the last paragraph of that letter,
7 do you recall any telephone conversation with Mr. Samuels that
8 this might refer to?

9 A I have no idea. It could have been any one,
10 I suppose, of a dozen or so that we had in here at that time.
11 I have no idea which one he is talking about here.

12 Q Could it have been Thomasville?

13 A I don't believe so.

14 Q Why don't you believe so.

15 A Here again we just didn't think of Mr. Samuels
16 in the Thomasville context.

17 Q Did Armstrong pay a finder's fee to anyone in
18 connection with the Thomasville acquisition or broker's
19 commission?

20 A I will have to answer that, not that I know of.
21 I moved out of the Treasurer's Office the 1st of '68 and I am
22 not aware of any.

23 Q Do you know a Mr. Cliff Walker?

24 A Cliff Walker?

25 Q Yes.

1 A You will have to help me.

2 Q I don't know. He may be connected with
3 Hornblower & Weeks.

4 A I don't recall the name.

5 Q How about the name, John Walker?

6 A John Walker, no, that doesn't ring a bell,
7 either.

8 Q Leon Rice?

9 A That doesn't ring a bell.

10 Q Did you see a letter Mr. Samuels wrote, and I
11 believe it was July 5, 1968, in which he inquired about his
12 commission or fee in connection with the Thomasville matter?

13 A I believe I saw that letter.

14 Q Did you discuss it with anyone?

15 A What was the date on that one again?

16 MR. SCHURTMAN: Would you show it to the
17 witness? It is AAA.

18 THE DEPONENT: I recall the letter generally.

19 MR. PENNOYER: We will get it out. I am handing
20 the witness a copy of Defendant's AAA for identification.

21 THE DEPONENT: I remember seeing the letter.

22 At this point I was in the present position I am in, in
23 International Operations, and the only discussions I had were
24 frankly of some amazement. But I was not directly a party
25 to the reply.

1 BY MR. SCHURTMAN:

2 Q With whom did you have your amazed discussions?

3 A I don't recall specifically who that was.

4 Q Did you discuss it with Mr. Binns or Mr. Banzhaf?

5 A I don't remember specifically.

6 Q Were you asked if you had informed Mr. Samuels
7 that he was not to be involved in Thomasville?

8 A At this time?

9 Q Yes.

10 A I don't remember that at this point we did any
11 second guessing or any review of this matter. I think again
12 all of us here had a little difficulty understanding Mr.
13 Samuels' position.

14 Q Did you prepare a memorandum or chronology
15 of fact for anyone at Armstrong or for Armstrong's lawyers?

16 A Did I prepare --

17 Q Relating to the Samuels situation.

18 A No, I was consulted.

19 Q By whom?

20 A At some point subsequent to the receipt of this
21 letter, but I didn't prepare --

22 Q By whom were you consulted?

23 A I believe it was someone from our Legal Depart-
24 ment, and as I remember, was it John Buchanan, a member of our
25 Pittsburgh attorneys.

1 Q Did you see a memorandum prepared by Mr. Finch
2 outlining his recollection of the Thomasville acquisition?

3 A No, I don't believe I saw that.

4 MR. SCHURTMAN: Would you show the witness the
5 privileged memorandum, Plaintiff's Exhibit 4 for identifica-
6 tion?

7 BY MR. SCHURTMAN:

8 Q Have you ever seen that before?

9 A Not that I can recall.

10 Q Did you have any conversations with Mr. Finch
11 concerning your conversations with Mr. Samuels?

12 MR. PENNOYER: At any time?

13 BY MR. SCHURTMAN:

14 Q At any time.

15 A At any time? I have really had no detailed
16 or substantive conversations with him. Since the letter from
17 Mr. Samuels on July 5, 1968 we have exchanged comments, that
18 is about all. But I have not reviewed --

19 Q When did this exchange of comments take place?

20 A I don't recall. I see him almost monthly.

21 Q What comments did you exchange?

22 A I think that they were simply a reflection of
23 my continued amazement that Mr. Samuels has taken the position
24 that he does.

25 Q Did you and Mr. Finch discuss the fact that he

A No, I haven't discussed it with Mr. Finch.

Q Did Mr. Finch ask you about it?

A No, not that I recall.

Q Did you also exchange comments about this with Mr. Binns, Mr. Warnock, or Mr. Banzhaf?

A Subsequent to --

Q July 5, 1968.

A July 5, they have been of the same nature as the comments that I have exchanged with Mr. Finch. I have discussed it a little bit more in detail with Mr. Banzhaf.

Q And what did you discuss with Mr. Banzhaf?

A Well, I think our discussion was largely in general terms and again reflected, for my part, my disbelief, the difficulty that I have in understanding Mr. Samuels' position.

Q Did you have any specific discussion with him about the conversation that you had with Mr. Samuels concerning the Thomasville matter?

A No, we haven't made any effort to review those in any detail.

MR. SCHURTMAN: Mr. Pennoyer, may I see the ribbon copy of Defendant's Exhibit AAA?

MR. PENNOYER: Did you say AAA?

MR. SCHURTMAN: Yes. This letter, July 5, 1968.

1 This is our file copy.

2 MR. PENNOYER: I hand you what appears to be
3 the ribbon copy of the letter of July 5, 1968, Samuels to
4 Binns, Donnelly, and Banzhaf.

5 MR. SCHURTMAN: We will mark this Plaintiff's
6 Exhibit 24 for identification.

7 (Plaintiff-Donnelly Exhibit No. 24,
8 Letter dated July 5, 1968 to Mr.
9 Binns, et al., from Mr. Samuels,
was produced and marked for identification.)

10 MR. PENNOYER: And that will include the
11 envelope which is attached. Off the record.

12 - - -

13 (Discussion off the record)

14 - - -

15 BY MR. SCHURTMAN:

16 Q Can you identify the initials AHS on Plaintiff's
17 Exhibit 24 for identification?

18 A I believe that is Albert H. Sheaffer.

19 Q Who is that?

20 A The Vice President and Secretary of the company.

21 Q Now Mr. Donnelly, I would like to move on to the
22 Babbitt situation. Did Mr. Samuels call the availability of
23 Bab-O to your attention?

24 A Yes, the current availability of Bab-O, that is
25 right.

1 Q He called that to Armstrong's attention.

2 MR. SCHURTMAN: Would you produce your copy of
3 a letter dated November 8, 1966 from Mr. Donnelly to Mr.
4 Samuels which I will ask the Reporter to mark as Plaintiff's
5 Exhibit 25 for identification?

6 MR. PENNOYER: I hand you the yellow copy of
7 the letter just referred to.

8 (Plaintiff-Donnelly Exhibit No. 25,
9 Letter dated November 8, 1966 to
10 Mr. Samuels from Mr. Donnelly, was
produced and marked for identifica-
tion.)

11 MR. SCHURTMAN: Was there a slip of paper
12 attached to that? I have an illegible Xerox copy attached
13 to mine. Or was that attached to something else?

14 MR. PENNOYER: Yes. Just for the record I am
15 handing Mr. Schurtman a penciled note with the name, L. E.
16 Foster on the top of it.

17 MR. SCHURTMAN: This note is attached to a
18 letter dated October 24, 1966 from Mr. Samuels to Mr. Donnelly.

19 MR. PENNOYER: That is correct.

20 BY MR. SCHURTMAN:

21 Q Mr. Donnelly, is the gentleman referred to as
22 Pop, the same person as L. E. Foster?

23 A He is.

24 Q What was Mr. L. E. Foster's position at Arm-
25 strong in late 1966?

1 A I believe at that point he was General Sales
2 Manager of the Consumer Products Division.

3 Q And he was involved in the Bab-O negotiations,
4 was he not?

5 A He really did the negotiating.

6 Q I show you Plaintiff's Exhibit 25 for identifi-
7 cation. Did you write that letter to Mr. Samuels?

8 A Yes.

9 Q On what terms did you ultimately acquire the
10 Bab-O business?

11 A I am afraid I don't remember the numbers or the
12 details. That was complicated and Mr. Foster handled all of
13 the negotiations.

14 Q What was it that you acquired, do you recall?

15 A I can't be precise. It is all in the record,
16 I am sure, but I don't remember that one.

17 MR. SCHURTMAN: Would you produce the contract
18 dated March 31, 1967 regarding the acquisition of Bab-O?

19 MR. PENNOYER: I produce what appears to be a
20 copy of that contract which appears to have signatures.

21 MR. SCHURTMAN: Let's mark that as Plaintiff's
22 Exhibit 26 for identification.

23 (Plaintiff-Donnelly Exhibit No. 26,
24 Contract dated March 31, 1967, was
produced and marked for identification.)

25 BY MR. SCHURTMAN:

1 Q I show you Plaintiff's Exhibit 26 for identifi-
2 cation. Are you familiar with this contract?

3 A Not really, no.

4 Q Did you negotiate it?

5 A No, I didn't.

6 MR. SCHURTMAN: Mr. Pennoyer, when your office
7 produced documents in connection with this case, one of the
8 documents produced was a table of contents coming from some
9 file, at least I think it was a table of contents. I see a
10 carbon copy of the table of contents annexed to one of your
11 folders. Could I have that marked as Plaintiff's Exhibit 27
12 for identification?

13 MR. PENNOYER: I hand it to you.

14 (Plaintiff-Donnelly Exhibit No. 27,
15 Table of Contents, was produced and
marked for identification.)

16 MR. SCHURTMAN: Plaintiff's Exhibit 27, Mr.
17 Pennoyer, refers to an inventory purchase agreement dated
18 4-1-67. May I ask that that be produced?

19 MR. PENNOYER: I hand it to you.

20 MR. SCHURTMAN: Would you mark this as Plain-
21 tiff's Exhibit 28 for identification?

22 (Plaintiff-Donnelly Exhibit No. 28,
23 Inventory Purchase Agreement dated
24 4-1-67, was produced and marked
for identification.)

25 BY MR. SCHURTMAN:

1 Q I show you Plaintiff's Exhibit No. 28 for
2 identification. Are you familiar with it?

3 A No, I am not.

4 Q The agreement refers to a purchase price to
5 be computed in accordance with Exhibit B annexed thereto. Do
6 you know what the ultimate computation of the purchase price
7 was?

8 A The only figure that I remember is a three
9 hundred thousand dollar purchase price figure and beyond that
10 I don't recall the computations or any of the details in the
11 negotiation. I wasn't a part of it.

12 MR. SCHURTMAN: Mr. Pennoyer, do you have any
13 records indicating what the purchase price of the inventory
14 was?

15 MR. KEIHNER: None other than what was pro-
16 duced.

17 MR. SCHURTMAN: Other than Exhibit B which is
18 simply a schedule of unit prices?

19 MR. KEIHNER: If you saw what was produced, we
20 have it. If not, we don't.

21 BY MR. SCHURTMAN:

22 Q Who would know what ultimate computation was
23 made? Who signed this on behalf of Armstrong, Mr. Donnelly?
24 I am referring to Plaintiff's Exhibit 28.

25 A That is Tom VanMetre.

1 Q Who is he?

2 A He replaced Mr. Foster as General Sales Manager
3 of the Consumer Products Division, as I recall.

4 Q Is he still with Armstrong?

5 A Yes.

6 Q Would he be the person who would know what the
7 purchase price was?

8 A I think he might, either he or Mr. Foster.

9 Q Is Mr. Foster still with Armstrong?

10 A Mr. Foster is with Thomasville at the moment,
11 but he is still in the Armstrong family. I feel sure both of
12 them would be familiar with it but I am not certain.

13 MR. SCHURTMAN: Mr. Pennoyer, when I inspected
14 the documents at your office the last time I indicated to
15 Mr. Keihner that I did not have time then to go through the
16 entire Babbitt file, so I would like to make arrangements to
17 inspect the entire Babbitt file at your office at some
18 appropriate time.

19 MR. PENNOYER: Yes, that is agreeable.

20 MR. SCHURTMAN: To see if there is anything in
21 it that reflects the final computation of the inventory
22 purchase, and if there isn't anything in it, then I would ask
23 you to look again. Somewhere in Armstrong there must be
24 some document that contains the final figure.

25 I suppose we could sit down with an adding

1 machine and figure it out but I would just as soon assume
2 that someone in Armstrong has the final figure.

3 BY MR. SCHURTMAN:

4 Q Now Plaintiff's Exhibit 28, which is the March
5 31, 1967 contract with Babbitt, indicates that you purchased
6 certain trademarks and trade names together with the good-
7 will business in connection with which such trademarks and
8 trade names are used. Plaintiff's Exhibit 28 indicates that
9 you also purchased certain inventory. Do you know whether
10 Armstrong purchased anything else?

11 A No, I don't.

12 Q Did you pay Mr. Samuels a fee or commission in
13 connection with the Bab-O, Babbitt situation?

14 A As I recall, Armstrong did pay him a fee in
15 connection with Babbitt.

16 Q How much?

17 A As I remember the figure, it was \$9,000.

18 Q Prior to the time that you paid that fee was
19 there any dispute concerning the amount of the fee?

20 A There was some difference of opinion concerning
21 the amount of it, yes.

22 Q What was that difference of opinion?

23 A As I recall, I believe we took the position
24 that the 3 percent fee should be contingent on Mr. Samuels
25 having found, negotiated, and consummated the deal. There

1 was never any question about the fact that he found it in the
2 sense of that particular deal, but we had some question about
3 his role in negotiating and consummating. As I recall, he
4 really had none in those two areas.

5 Q Did you offer to pay him a lesser fee for
6 having found the deal?

7 A We suggested something less than 3 percent we
8 felt would be more reasonable.

9 Q What percentage did you suggest?

10 A I am relying on my memory here. As I recall,
11 I think we felt that 1 percent would have been a more reason-
12 able figure.

13 Q Did you have a meeting with Mr. Samuels?

14 A We discussed it on the phone, as I recall.

15 Q What did you say and what did he say?

16 A He said that he felt that he was entitled to
17 the full 3 percent.

18 Q On what did he base that?

19 A I can't recall his specific arguments.

20 Q What did you say?

21 A Well, we ultimately agreed to pay him his
22 3 percent.

23 Q Did you tell him why you agreed to pay
24 3 percent?

25 A I don't recall an explanation.

1 Q Did you discuss it with anyone at Armstrong?

2 A I believe with the Legal Department.

3 Q With whom?

4 A I don't remember the individual.

5 Q After discussing it with your Legal Department
6 you agreed to pay Mr. Samuels 3 percent?

7 A Yes.

8 MR. SCHURTMAN: Would you produce your copy of
9 a letter dated January 11, 1967 from Mr. Donnelly to Mr.
10 Samuels?

11 I will ask the Reporter to mark that letter as
12 Plaintiff's Exhibit 29 for identification.

13 MR. PENNOYER: I hand you the pink copy of the
14 letter just referred to.

15 (Plaintiff-Donnelly Exhibit No. 29,
16 Letter dated January 11, 1967 to
17 Mr. Samuels from Mr. Donnelly, was
produced and marked for identifica-
tion.)

18 MR. SCHURTMAN: . Incidentally, I don't have a
19 copy of 28. I wonder if I could arrange to get one.

20 BY MR. SCHURTMAN:

21 Q I show you Plaintiff's Exhibit 29 for identifi-
22 cation. Did you write that letter?

23 A Yes.

24 Q Now referring to the first paragraph, does that
25 refer to a telephone conversation you had with Mr. Samuels

1 or a face to face meeting?

2 A I believe it is a telephone conversation.

3 Q Is that the one you just testified about or is
4 it another one?

5 A I am not sure I know which one you mean.

6 Q You just testified about a telephone conversa-
7 tion you had with Mr. Samuels in which you told him that you
8 wanted to pay 1 percent commission on the Bab-O deal and he
9 wanted 3 percent.

10 A I am not sure whether that was a part of this
11 telephone conversation or not.

12 Q Can you remember the telephone conversation
13 that you had on that Sunday referred to in the first para-
14 graph?

15 A I do not remember specifically beyond the
16 references made in here.

17 Q You say in that letter that it was good to talk
18 to you on Sunday and to know that you share our feelings
19 with regard to our letter of agreement dated August 25, 1966.
20 What were your feelings with regard to that letter?

21 A I think that the formal agreement should be
22 terminated.

23 Q Is that what you referred to?

24 A I believe that is what we referred to there,
25 yes.

1 Q What was Mr. Samuels' original recommendation
2 in this regard? Again I am quoting the language in your
3 letter.

4 A I think his original position was that we
5 didn't need any written agreement.

6 Q What did Mr. Samuels say during this conversa-
7 tion?

8 A I don't recall his specific comments.

9 Q Was this the conversation during which you told
10 him not to get involved in Thomasville, when you were carry-
11 ing out Mr. Warnock's directive?

12 A I don't believe it was.

13 Q That conversation came earlier or later?

14 A I believe it would have been later.

15 Q But at the time you had your conversation with
16 Mr. Samuels on that Sunday that is referred to in the letter,
17 had you spoken to Mr. Warnock or to Mr. Banzhaf about Mr.
18 Samuels' call to Mr. Finch?

19 A I don't believe so. I don't believe I knew
20 about it at this time.

21 Q Do you remember any other conversations or
22 communications with Mr. Samuels regarding the Thomasville
23 matter other than what you have testified to today?

24 A As far as I can recall, at some point this
25 afternoon we touched on those elements that I recall.

1 Q You recall nothing else of significance?

2 MR. PENNOYER: Do you mean about Thomasville?

3 BY MR. SCHURTMAN:

4 Q About Thomasville and Samuels.

5 A Not that hasn't been mentioned. I don't recall
6 that we left anything out.

7 MR. SCHURTMAN: I have no further questions at
8 this time.

9 MR. PENNOYER: No questions. Thank you, Mr.
10 Donnelly.

11 - - -

12 (The taking of the deposition was concluded
13 at 4:10 p.m.)

14 - - -

15 FURTHER DEPONENT SAITH NOT.

16 - - -

17
18 I hereby acknowledge that I have read the fore-
19 going transcript, and the same is a true and correct record
20 of the deposition given by me.

21

22 _____
23 Date

Deponent

24

25

C E R T I F I C A T E

STATE OF PENNSYLVANIA :
: to wit:
COUNTY OF LANCASTER :

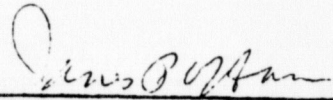
I, James P. O'Hara, a Notary Public duly
commissioned and qualified in and for the County of Lancaster,
State of Pennsylvania, do hereby certify that, pursuant to
Notice, there came before me on the 23rd day of November,
1971, beginning at 1:30 o'clock p.m., in Conference Room 211,
Building Products Division, Armstrong Cork Company, Liberty
and Charlotte Streets, Lancaster, Pennsylvania, the following
named person to wit: Frederick Stockham Donnelly, Jr., who
was by me duly sworn to testify to the truth and nothing but
the truth of his knowledge touching and concerning the matters
in controversy in this cause; that he was thereupon carefully
examined upon his oath and the examination reduced to writing
under my supervision; that the deposition is a true record of
the testimony given by the witness.

I further certify that I am neither attorney or
counsel for, nor related to or employed by, any of the
parties to the action in which this deposition is taken, and
further that I am not a relative or employee of any attorney
or counsel employed by the parties hereto or financially
interested in the action.

1 In witness whereof I have hereunto set my hand
2 and affixed my notarial seal this 26 day of December, 1971.

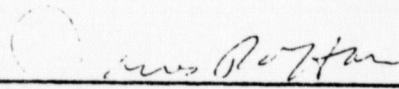
3
4 My commission expires:

5 May 5, 1975.

6
7 
8 Notary Public

9 NOTARY PUBLIC
My Commission Expires May 5, 1975
Lebanon, Pa. Lebanon County

10
11
12
13 I hereby certify that the proceedings and
14 evidence are contained fully and accurately in the notes
15 taken by me on the deposition of the within cause and that
16 this is a correct transcript of the same.

17
18 
19 Official Reporter

20
21
22 Reported by:

23 James P. O'Hara
24 Mohrbach & Marshal, Inc.
2000 State Street
25 Harrisburg, Pa.